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OR

CHRONICLES AND MEMORIALS OF GREAT BRITAIN AND IRELAND

DURING

THE MIDDLE AGES.

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THE CHRONICLES AND MEMORIALS

OF

GREAT BRITAIN AND IRELAND

DURING THE MIDDLE AGES.

PUBLISHED BY THE AUTHORITY OF HER MAJESTY'S TREASURY, UNDER THE DIRECTION OF THE MASTER OF THE ROLLS.

On the 26th of January 1857, the Master of the Rolls submitted to the Treasury a proposal for the publication of materials for the History of this Country from the Invasion of the Romans to the reign of Henry VIII.

The Master of the Rolls suggested that these materials should be selected for publication under competent editors without reference to periodical or chronological arrangement, without mutilation or abridgment, preference being given, in the first instance, to such materials as were most scarce and valuable.

He proposed that each chronicle or historical document to be edited should be treated in the same way as if the editor were engaged on an Editio Princeps; and for this purpose the most correct text should be formed from an accurate collation of the best MSS.

To render the work more generally useful, the Master of the Rolls suggested that the editor should give an account of the MSS. employed by him, of their age and their peculiarities; that he should add to the work a brief account of the life and times of the author, and any remarks necessary to explain the chronology; but no other note or comment was to be allowed, except what might be necessary to establish the correctness of the text.

The works to be published in octavo, separately, as they were finished; the whole responsibility of the task resting upon the editors, who were to be chosen by the Master of the Rolls with the sanction of the Treasury.

The Lords of Her Majesty's Treasury, after a careful consideration of the subject, expressed their opinion in a Treasury Minute, dated February 9, 1857, that the plan recommended by the Master of the Rolls "was well calculated for the accomplishment of this important national object, in an effectual and satisfactory manner, within a reasonable time, and provided proper attention be paid to economy, in making the detailed arrangements, without unnecessary expense."

They expressed their approbation of the proposal that each Chronicle and historical document should be edited in such a manner as to represent with all possible correctness the text of each writer, derived from a collation of the best MSS., and that no notes should be added, except such as were illustrative of the various readings. They suggested, however, that the preface to each work should contain, in addition to the particulars proposed by the Master of the Rolls, a biographical account of the author, so far as authentic materials existed for that purpose, and an estimate of his historical credibility and value.

Rolls House,
December 1857.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

YEARS XII AND XIII.

Year Books

OF THE REIGN OF

KING EDWARD THE THIRD.

V. 2

YEARS XII AND XIII.

EDITED AND TRANSLATED

BY

LUKE OWEN PIKE, M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW,

AUTHOR OF "A HISTORY OF CRIME IN ENGLAND."

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INTRODUCTION.

INTRODUCTION.

Value of the Year-Books for legal and historical purposes.

It may be hoped that the value of the Year-Books will be more and more widely recognised as the spirit of historical inquiry gains strength and the methods of historical research are improved. Few, perhaps, of those who have looked into the repulsive pages of the old black-letter editions, in search of a precedent to illustrate some obscure point of law, or with an antiquary's love of ancient typography, have paused to consider how much of our English history lies buried in the old law reports and the records which illustrate them. The tendency, however, of modern historical thought is to regard not only the individuals who may float prominently upon the surface of society at any particular period, but that society itself in its entirety, to seek out the general springs of action which give it its character, to trace the causes which have made it what it is, and to mark the subtle changes which are ever transforming it. To know how kings and their ministers strove and fought and plotted (however interesting and important the knowledge may be in itself), is not to know how the people at large were acting and thinking. To know even what were the laws and constitution, and how they grew, is not to know what was the condition of those who were in real or nominal subjection to them. To be familiar with the lives of great men is not to be familiar with the life of the nation; and the lives even of the great men themselves can be but imperfectly appreciated when dissociated from the lives of their fellows.

Apart from the value of the Year-Books as law reports, they illustrate, or can be made to illustrate, not only what is generally known as legal and constitutional history, but the actual effect of the laws and constitution in operation. They show, or can be made to show, not only what the law was, and what use was made of it by Judges and Counsel, but much also of the social condition of the litigants, and even of persons who were not litigants at all. The end which has been kept in view in editing and translating the reports in the present volume has been to render them accurate, by deriving as much aid as possible from every source of information connected with them. The object of this Introduction is to explain the method which has been adopted, and to indicate some of the very important facts which either the reports themselves or the records which supply their deficiencies may be brought to reveal.

And for philological purposes.

The Year-Books, too, are sources of philological information quite *sui generis*. They are not only a great storehouse of the French language as used in England, but (subject to the errors made by the various transcribers) they also exhibit that language as employed in every day speech by the most highly educated Englishmen of the period. They are thus, in their diction alone, of inestimable value for two distinct purposes—for comparison with the French language of the continent, on the one hand—for the illustration of the English language and its history, on the other.

This field of philological research might almost be described as virgin soil. The Year-Books are little if at all known to the philologists of the continent; and the French language as used in England has never yet been systematically investigated by any competent English scholar. There is a "Norman-French Dictionary" by Kelham, a dictionary published in 1701 entitled "The Law French Dictionary," a few translations of French words in some of the older English law-dictionaries

which have often been copied and re-copied, and a few glossaries scattered in various works, of which that published by Mr. Nichols in his edition of Britton deserves to be mentioned as an excellent appendix to a carefully edited book. There is, however, no comprehensive dictionary or glossary of the French language as written and spoken in England in the reign of Edward III., or at any earlier period.

It is a part of the instructions to every editor under the direction of the Master of the Rolls that he is to compile a Glossary of the unusual words found in the work which he edits. This portion of my task is being gradually completed. It is not one to be lightly undertaken or hastily executed.

A new plan adopted in editing the present volume.

With the object of making the reports as useful as possible for the purposes I have indicated, I have adopted an entirely new plan in editing the present volume.

Various readings, extensions, and orthography.

The various readings mentioned in the foot-notes of this as compared with previous volumes are more numerous, I think, in the proportion of about ten to one. It appeared to me to be my duty to note every difference of reading which could in any way affect the sense, and so to give the reader an opportunity of selecting any words found in the MSS., should he prefer them to those adopted in the text.

The foot-notes, however, do not show every variation of spelling of words or parts of words in the various MSS. The original intention was to notice every variation, even of a letter; but after a little progress had been made on this principle it was found to involve endless repetitions of similar or identical notes. When there are four MSS. they commonly differ in the spelling of the most ordinary words. Thus *fuit, fut, feut,* and *fust* are used indifferently for the third person singular of the preterite tense indicative of the French word signifying to

be; and there are innumerable words which are subject to similar variations. It would be pedantic, and vexatious to the reader to encumber every page with a reiteration of these differences, especially as it has been ascertained that they are not differences indicating local modes of spelling. An attempt, however, will be made to collect the various forms in which the words appear, for use whenever there is sufficient material for a comprehensive Glossary of the language of the Year-Books.

With regard to the manner in which the abbreviations in the MSS. have been extended, it may be said generally that there is some kind of warrant in the MSS. themselves for almost if not quite every extension in the text as printed. It happens fortunately that words or parts of words which are usually written in a contracted form are occasionally written at length; and it is possible by careful observation to reproduce in full every word as it might have been written by the scribe. The chief difficulty, indeed, is that, in the absence of settled principles of orthography, the same word appears *in extenso* written differently not only in different MSS. but in different parts of the same MS. Thus *aver* and *avoir*, *maner* or *manere* and *manoir*, *recoverist* and *recoverast*, are practically interchangeable forms. To adopt one extension only in these and similar cases when, as most commonly happens, the words are contracted (or, as sometimes happens, represented by a single letter), would be to mislead, and to deprive the Year-Books of a portion of the philological value which they possess. In a future volume it may be hoped that this subject may be more fully illustrated in connexion with the Glossary. It may now suffice to say that the want of uniformity of spelling in the present volume is not caused by inadvertence. When the report is from a single MS. the words are written precisely as they appear in the MS., wherever it gives the words in

their entirety, and in accordance with the nearest extension in the same MS. when it gives a letter or a part of a word instead of a whole word. When, however, as is most commonly the case, the text of the report is founded on two, three, or four MSS., it partakes to a considerable extent of the character of the MS. from which the first transcript was made. But, as the foot-notes will show, there are numerous passages introduced from the other MSS. in order to make the sentences intelligible. Here also care has been taken to present the extended words in such a form as might have been used by any of the scribes, without forcing them into conformity with a rigid system which the writers of the Year-Books did not recognise.

The forms in which some of the proper names appear will be surprising to those who are familiar only with modern French. William instead of Guillaume, Hugh instead of Hugues, as printed in the French text, may perhaps suggest the idea of ignorance or carelessness on the part of the editor, but the words are printed as they appear in the MSS. There may, indeed, be a doubt whether "Hugh" is not written so as to indicate an abbreviation, but there is no doubt whatever in the case of "William." There has been some difficulty also in putting into a French form names supplied from the Latin of the records, and not given in the MSS. of the Year-Books. In these cases analogy has been the guide; thus Oliverus has been rendered Oliver (and not Olivier), because the usual form for Chancellor is Chaunceler and not Chancelier; Juliana is rendered Juliane (and not Julienne), because no warrant could be found for any similar change of *ana* into *enne* in the Year-Books of the period.

Comparison of the reports with the records:

The present volume differs also from its predecessors in the frequent references, never before attempted, to the records of the cases which have been identified on the rolls, especially those of *Placita de Banco*. The

references to the rolls.

obscurities and contradictions of the MSS. of the Year-Books can often be explained or removed by the authoritative enrolment of the Court; and though there are commonly many matters in the report which are not in the corresponding record, there also occur sometimes matters of importance in the record which are not in the report, but which are necessary for its elucidation. The record is, in fact, the complement of the report, and the report of the record.

Some of the reports are now, I trust, rendered intelligible, which would have been hopelessly unintelligible without the assistance of the records; and others, it will be seen, have been illustrated by matters of legal or historical interest, which are to be found only upon the rolls. I wish, indeed, that it had been possible to follow the excellent example which has been set by Sir George Croke, and to compare all the reports with the corresponding records. Many of them, however, are, from the absence of all names of places and persons, not susceptible of any such comparison; others again afford a deceptive clue in one name which, perhaps, occurs in several cases on the same roll. A great obstacle, too, is presented by the enormous bulk of the unindexed rolls. To turn over, each by itself, the successive membranes is a physical labour which requires a considerable expenditure of time and patience, and has to be repeated again and again. I devoted many days to this work, and found most of the cases for which I was searching, besides some others which I recognised during the progress of the search. The result has been that the most obscure passages in the MSS. have been explained, and that the text is now far more accurate than I could otherwise have made it. In many instances, too, the real names of the parties and places have been restored from the rolls, and it may be hoped that some little additional interest as well as clearness may have been in this way imparted to the reports.

The extent, however, of the assistance derived from the rolls, and the necessity for it, can be understood only after some account has been given of the difficulties which occur in the use of the MSS. of the Year-Books, and of the manner in which they seem to have been compiled.

Character of the MSS. and establishment of the text.

The MSS. which have been used for the text of the present volume are the Temple MS., the Lincoln's Inn MS., and the "Additional MSS." numbered respectively 16560 and 25184 in the British Museum. They have all been described in general terms in the Preface to the volume of Year-Books 11–12 Edward III. It is, however, necessary to explain in detail the manner in which they have been employed.

No one of the MSS. of the Year-Books with which I am acquainted can fairly claim uniform pre-eminence. There is, indeed, a little ambiguity in the word "manuscript" as applied to the manuscript volumes containing these reports. Though the writing in all is approximately contemporaneous, it is not always in the same hand throughout a volume, and there is no reason to suppose that the arrangement of the constituent leaves represents in all cases an arrangement made in the fourteenth century. In many cases, without doubt, the arrangement is contemporaneous with the writing, as term follows term in due order of time, and one term ends and another begins in the middle of a page. In others, however, the collection has obviously been made up from different materials bound together in later times. The volume numbered 16560 among the Additional MSS. in the British Museum is a very remarkable instance. In more places than one a report is left incomplete and the page on which it ends is succeeded by one containing matter that belongs to a different term. The value of one part of the volume affords but little indication of the value of another, and it would hardly be an exaggeration to say in reference to one part of it that the MS.

is indisputably the worst of the four, and in reference to another that it is indisputably the best.

The object, however, which an editor may be expected to keep in view is the establishment of the best text possible from the most authentic sources, and that object I have endeavoured to attain, in the only manner which seemed practicable, by the selection of the best readings of each particular passage.

For the reports of Michaelmas Term 12 Edward III. only two of the MSS. are of any service (the Additional MSS. 16560 and 25184), and both of them unfortunately happen to be for that particular period less accurate than elsewhere. Each of them does, however, to some extent make good the defects and correct the errors of the other; and it has often been found possible to settle an intelligible text by making free use of the two in places where either of them alone would have been insufficient. There are, nevertheless, many passages in this term which would have remained unintelligible except after conjectural emendations, or after the far preferable, because authoritative, correction supplied by the records. A good instance of this occurs in the *Quare impedit* No. 17.[1]

Unintelligible reports rendered intelligible by the aid of the records of the cases;

It will be seen by reference to the foot-notes that it would have been impossible to make this report consistent with itself by any manipulation of the two MSS. Not only do the names and letters differ in the different MSS., but in neither is the same letter or name used with any uniformity to indicate the same party or person. There was no hope of clearing away the confusion except by more or less hazardous conjectures or by comparison with the record, if the record could be found. In this instance there was a better clue

[1] This case is taken simply as an illustration. The foot-notes to this Introduction, and throughout the volume, will show how much assistance has been obtained from the records in the correction and illustration of the reports.

to the entry upon the roll than usually exists. In the first place the mention of Cockermouth afforded an indication of the county which would probably appear in the margin of the roll. In the second place the quotation, at the end of the report, of a portion of the record (though in a very imperfect manner in both MSS.) afforded sufficient means of identifying it when found. The search was thus attended with less difficulty than commonly attends searches of a like nature, though there was no escape from the labour of turning over and examining a roll which consists of 475 skins of parchment, about 33 inches long by 10 broad, closely written on both sides, and without any guide to the contents except the names of the counties occurring in the margin and those not in alphabetical or other systematic arrangement. When found, the record of this case served a double purpose. It furnished the means of substituting a complete and accurate transcript for the inaccurate fragments of copies from the roll in the MSS. of the Year-Books, and at the same time placed beyond all doubt the names of persons and places which should appear in the report.

Or sometimes by other records.

Sometimes it happens that upon failure to find the record of a particular case in the term in which it is reported, assistance may, with sufficient patience and perseverance, be obtained elsewhere among the rolls. Thus in the case No. 49, in Hilary Term, in the thirteenth year, it was obvious that there was some inaccuracy in the MS. The "Luy" in "Luy de Louthre" was clearly an impossible name, and the reading "a J. Vacherie a A." was on many grounds open to suspicion. The *Parliamentary Writs*, however, showed that there was a Hugh de Louther living in the reigns of Edward II. and Edward III., and that Louther was a Westmoreland or Cumberland name. The *Placita de Banco* of the term were therefore searched in the hope of finding the record by seeing one of those counties mentioned in the margin. The search

was unsuccessful, possibly because the case may be entered as of another term, or possibly because (though entered of that term) it escaped observation in the not very easy process of examining some hundreds of skins of parchment. The printed calendars of the Charter Rolls and of the Patent Rolls were then searched in the hope that some reference to one of the grants mentioned in the report might be found, but nothing was discovered. The calendar of Patent Rolls, however, printed by the Record Commission, is incomplete, and the chance remained that some information might be obtained from a manuscript calendar. There is no perfect calendar of the Patent Rolls of the reigns of Edward II. and III., but there are a number of volumes known as "Palmer's Indexes," which contain references to various records of various periods grouped under various heads. It was ascertained that in one of these volumes a collection had been made under the head of Westmoreland, and this gave a reference to the grant of the reversion mentioned in the report though not to the grant of the estate for life. The grant of the reversion when found on the Patent Roll showed (as conjectured) that Hugh de Louthre was the grantee for life, and that it was upon his death that the reversion of the manor of Harkla granted to Thomas de Rokeby was expectant. No light was thrown upon the passage "a J. Vacherie a A." further than to show that it could not be correct, and that Hugh de Louthre might be substituted for a part and probably for the whole of it. The result, however, of the investigation was to give a reading, upon unimpeachable authority which removed one of the principal difficulties from an otherwise unintelligible report.

In the thirty-seventh case in Michaelmas Term, in the twelfth year, there appears an "Abbot of Conesby." There is no Abbey of Conesby mentioned in Dugdale's *Monasticon*, though there is a Priory of Coningsheved, Coningshead, or Conishead; but there is nothing to show that

the Prior of Conishead was the person meant by "the Abbot of Conesby." As the county is not stated in the report, it appeared at first sight difficult, if not impossible, to correct the name or description by any record. An enrolment, however, relating to the jury in a similar if not the same case, was found by chance (after the report had been passed through the press) on the roll[1] of the following term. Both Wildemore and the vill of Coningsby are there mentioned, as in the report, and there can hardly be a doubt that the place is thus identified. The parties were William de Ros de Hamelak and the Abbot not of Conesby but of Kirkestede, whose name ought probably to have appeared in the report.

Causes of inaccuracies in the MSS.; probable mode in which the reports were drawn up and copied

The confusion of names or letters which has in very many instances crept into the longer reports was almost inevitable at a time when both printing and short-hand were unknown. If, as is commonly supposed, there was an official reporter, a prothonotary or other official of the Court, he might, it is true, have inserted the names as correctly in the reports as in the records. But as there are two independent reports (widely differing from each other) of many of the cases in the present volume, it is evident either that there was not one common source from which both could be derived, or that, if there was, they went through some process of editing which completely changed them before they assumed their present shape. There is, however, some reason to doubt whether there was any official reporter at this time. According to the volume of Year-Books 11–12 Edward III. (p. 613), the Court said *una voce* to counsel who had cited a case, "Vostre livere est faux," of which the most natural translation seems to be, "Your book is incorrect." The counsel appears to have been quoting what was in his copy of some book of reports. The Court, either because acquainted with a better copy, or from personal recollection, denied that any decision such as that which

[1] *Placita de Banco*, Hilary 13 Edward III., R°. 245, d.

was alleged had been given. It can, therefore, hardly be doubted that the counsel was in possession of some report which had not been drawn up by authority of the Court in the form in which he quoted it.

The case on which the counsel relied occurred, it is true, not in the Common Bench, but on the Bedford Eyre, and there may have been an authorised reporter for the Court of Common Pleas, but not for the circuit. But the facts all seem to indicate that, if there was one authorised reporter for the Common Bench, there must have been at least one other reporter who, whether authorised or not, took down the cases, and (if the expression may be used in reference to manuscripts) published another edition. It is, however, hardly probable that the Year-Books which were used by counsel and judges, and which have been handed down to the present time, were merely the rough notes or transcripts of the rough notes made at the time of the hearing. It is only reasonable to suppose that the memoranda hastily jotted down were expanded and revised after the sittings of the Court, and it is not absolutely impossible that two persons who had been present might, out of the same memoranda, have constructed reports as widely different as some of those which occur in the Additional MS. 16560 on the one hand, and in the remaining three MSS. on the other. But such memoranda, though they may be the foundation of the report, cannot be regarded as the report itself, and it is difficult to see any escape from the conclusion that there must have been more reporters than one.

There are indications that some if not all of these reporters must have had access to the records or to transcripts of the records. This affords some confirmation of the received opinion that they were officers of the Court, who, however, need not necessarily have been official reporters. But, it may well be asked, if the reporters had access to the rolls, and were the very

persons who made or supervised the entries upon the rolls, and if, as is the fact, those entries have been made with remarkable accuracy, how comes it that the names of persons and places, or the letters which indicate them, are so frequently misplaced and confused in the Year-Books? The answer is to be found in the social and economical conditions of the period. The entry on the roll was made and examined once for all and no copy was required for official use. The reports on the other hand had to be transcribed and re-transcribed for the use of judges and counsel; and the chances of error increased with every copy that was made. In some copies (as in the best parts of the Additional MS. 16560) the names of parties and places were given at length; but the expense of parchment, and possibly also of that kind of skilled labour which could alone be employed upon the work, suggested every kind of abbreviation. Except where misnomer or variance is in question, it was probably argued, any letters of the alphabet will represent the parties just as well as their real names and additions, and the substitution of one for the other will not in any way affect the point decided. This doctrine may cause no ill effects so long as the application of it is in trustworthy hands, but it is a dangerous instrument in the hands of clerks who do not follow the sense of the words which they are copying. It is evident that the transcribers have often either misread the capital letters in the report before them, or else have persuaded themselves that, if any letter will serve to represent a party, any other letter will serve just as well, and the plaintiff and defendant may exchange symbols at pleasure.

Mistakes of this kind are sometimes corrected in a later hand, but more often not; and it seems difficult to explain why there was not some system of examination and correction in order to ensure accuracy in manuscripts of so much importance. Many of the errors are,

without doubt, so obvious that they would cause but little inconvenience to any one familiar with the practice of the period. Others, however, reveal themselves only after considerable reflection, and it may have been one of this character which subjected an unfortunate counsel to the remark of the Court, "Vostre livere est faux." The necessity of noting with very great care every various reading which can in any way affect the sense will be apparent from the foregoing remarks.

Reports in one MS. and not in others: different reports of the same cases.

The volume which is numbered 16560 among the Additional MSS. in the British Museum is very defective and inaccurate in the portion which contains reports of Michaelmas term in the twelfth year. That portion, however, agrees with the MS. No. 25184 in the number and in the order of the reports; and the text of both MSS., as well as of the corresponding passages in Fitzherbert's *Abridgment*, is evidently from a common source. Most of the reports of the three following terms in No. 16560 (though not quite all of them) are from a source which appears to be independent of that from which the reports in No. 25184, and in the Temple and Lincoln's Inn MSS. are derived. Many of the cases do not occur in the three last-mentioned MSS. at all, and most of those which do occur there are reported in a different form in 16560.

Where there are two or more reports of the same case all are printed, but one only in the larger type.

The existence in the Additional MS. No. 16560 of a series of reports throughout the thirteenth year of the reign which are for the most part moulded into a different shape from those in the other MSS. has caused a little embarrassment. The differences between this MS. and the others are in many instances far too great for representation by various readings in the notes, as the whole substance is organically different. The text of 16560 or that of the other MSS. might have been ignored, but the objections to both of those alternatives seemed insuperable. It was impossible to discard the text of the Temple MS., as (apart from its intrinsic value) it is

better known than any other through Mr. Serjeant Manning's transcript and translation, to which references may have been made. It was equally impossible to leave wholly out of consideration the text of No. 16560, in which sometimes the best report is to be found, and in which there often occurs matter serving as a good introduction to the reports in another form. The only remaining course was to print the reports in both forms, placing that first which seemed either to be the best *per se* or to serve best as an introduction to the other. This has accordingly been done, but the form of report which stands second has been printed in smaller type, though in some few instances, where new matter is introduced, a passage has been printed in the usual type.

References are made in the present volume to the *Liber Assisarum* and Fitzherbert's *Abridgment*, wherever a report is known to be there noticed.

Another new feature in the present as compared with previous volumes in the Rolls Series is the reference by side notes to the cases in the *Liber Assisarum* and in Fitzherbert's *Abridgment* which appear to be susceptible of identification with the reports in the Year-Books. There are but few in the *Liber Assisarum*[1] (the whole of those of the 13th year occupying less than two folio pages), but those in the *Abridgment* are more numerous. It has long been known that Fitzherbert included reports (from the reign of Henry III. downwards) of various years which are not represented in the old editions of the Year-Books; but no systematic attempt to make use of the knowledge seems to have been hitherto made except by the publication of the reports of the reign of Richard II., collected out of Statham's, Fitzherbert's, and Brooke's Abridgments[2].

It is asserted in Reeves's History of the English Law[3] (a work usually remarkable for its accuracy) that Fitz-

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[1] A table of the references made in the present volume to the *Liber Assisarum* is printed below, p. cxxxii.

[2] By Richard Bellewe, published in 1585, and reprinted in 1869.

[3] Ed. Finlason, vol. 2, p. 457.

herbert and Brooke had abridged but few cases from the Year-Books of the earlier part of the reign of Edward III., and that the reports in and subsequent to the fortieth year of the reign, together with the *Liber Assisarum,* constituted the principal depositary of the law of the period. However true this statement may be in relation to Brooke, it cannot be accepted as strictly correct in relation to Fitzherbert.

It is the fact that there are in Statham's and Brooke's *Abridgments* but very few cases of the twelfth and thirteenth years of the reign, but it appears to me to be a part of my duty to point out what has been done by Fitzherbert. In relation to the total number of reports from which he might have selected, he seems to have taken quite as large a proportion from this as from any other period, and there is no foundation for the conjecture that he regarded them as of minor importance. The principle on which his compilation was made is simply that of the arrangement, under heads somewhat arbitrarily fixed, of any matter which he could find, without any regard whatever to date. That which could not be conveniently introduced under his titles, or did not illustrate some particular point in his mind, was omitted. Sometimes a portion of a report is introduced under one head, and another portion of the same report under another.

The absence in the present volume of any side-note referring to Fitzherbert shows that (so far as has been ascertained) the particular report does not occur in any form in the *Abridgment;* and it will be seen that some of the most remarkable cases have either been omitted altogether from the *Abridgment,* or mutilated in order that they might serve the special purpose which Fitzherbert had in view, and no more. Fitzherbert's work, indeed, is a rude attempt to make a digest of the law, by forcing sometimes whole reports and sometimes fragments of reports into alphabetical order. The dates,

however, are given (though not in chronological order), and it is thus possible, by inspecting every page, to make a complete list of all the cases relating to any particular year. The edition which I have used is the *folio* in two volumes of 1565, but the references, being by title and number, are equally applicable to all the editions.[1]

Collation and use of the *Liber Assisarum* and Fitzherbert's *Abridgment*.

Though, however, reference is thus made to the *Liber Assisarum* and to Fitzherbert's *Abridgment*, and though every case known to occur in either has been collated, word by word, with the text of the present volume, it has not appeared expedient to state all the various readings which may be found in those books. There is no evidence of any collation of MSS. by the editors, and the text, as printed by them, is probably a transcript in each case from a single manuscript, with all the inaccuracies which may have occurred in the processes of transcription and printing. It would, therefore, be a needless encumbrance to the foot-notes, already, perhaps, too numerous, to mention, among the readings found in the contemporary MSS., the innumerable variations which may, in many cases, be merely errors of the press. It has, however, happened more than once that the *Liber Assisarum* or Fitzherbert's *Abridgment* has afforded a clue to the interpretation of an obscure passage, especially in the reports of Michaelmas term of the twelfth year of Edward III., where the MSS. are more than usually imperfect, and have evidently suffered in transcription from an original which, or a copy of which, may have been used by Fitzherbert. But here, as elsewhere, the most trustworthy aid to a report is the record whenever it can be identified; and I have not ventured to make use of any documents but the records for the correction of the MSS. of the reports except in instances in which the text would otherwise be unintelligible and

[1] A Table of the references made in the present volume to Fitzherbert's *Abridgment* is printed below, p. cxxxiii.

when I could thus rely on some sort of authority rather than on mere conjecture. Both the *Liber Assisarum* and Fitzherbert's *Abridgment* were published at a time when French had ceased to be a language spoken by Englishmen in England, and long before any assistance could be derived from philological research as it is understood at the present time. The text of them, as printed, is therefore not a very accurate representation of an ancient MS. with its abbreviations, and still less a representation of the words *in extenso*. Thus, although the elliptical expressions are sometimes illustrated by some additional words in the *Liber Assisarum* or the *Abridgment*, a new difficulty is just as often suggested by them which does not occur in the MSS.

Illustration from the mode in which a report of an action of Deceit has been corrected.

A good example both of the difficulty with which a sound text and translation can be settled, and of the advantage which may sometimes be gained from a comparison of the *Abridgment* with the MSS., occurs in the fourteenth case (a writ of Deceit) in Michaelmas term in the twelfth year. This kind of action was brought when judgment had been given by default in a previous action against a tenant or defendant who subsequently alleged that he had not been informed of the proceedings. The usual form of the writs of Entry, for instance, was a direction to the Sheriff that he should command the tenant to render to the demandant the land claimed, and, if the tenant refused, that he should summon the tenant by good summoners to show the cause of this refusal. If the tenant knew nothing of the writ, and was never summoned, he would of course not appear, and in the writ of Deceit, brought upon an alleged fraudulent recovery of this kind, an allegation that the tenant had never been summoned was part of the usual form. The recoveror in the original action usually pleaded in defence to the writ of Deceit that the tenant must have been duly summoned because he caused himself to be essoined, and that his default was subsequent to the essoin. To this the recoveree (the plaintiff in the writ

of Deceit) usually replied that the essoin was fraudulently cast without his knowledge, by the recoveror (the defendant in the writ of Deceit). The question of fact relating to the summons could not be decided without the supposed summoners, and the sheriff was therefore directed by *Venire facias* to cause them to come and certify the Justices on the point. When there had been an alleged view, the supposed viewers were also to be brought before the justices by *Venire facias.*

In the case now under consideration the words "la "som[ons] fut pris et touz les autres" occur in both MSS., and the translation which at first suggests itself is, "The summons was taken, and all the others"; but this would be quite meaningless. In the *Abridgment,* however, there are substituted for the first four words the words "les som. fuer. prists," from which it is apparent that "the summoners" (and not the summons) may be the translation. The summoners and the others (that is to say probably the viewers) are "*pris*" or "*prists.*" The translation here, in order to be accurate, must be in accordance with the facts which would result from the process rather than with any philological theory concerning the functions of the letters *e* and *i* in mediæval French. Now, as the process for bringing in the summoners was not a *Capias,* but a *Venire facias,* it is evident that "*pris*" or "*prists*" could not be correctly rendered "taken." They had come to be examined, and were "ready" or "at hand" in or near the Court. "*Pris*" and "*prists*" are here representatives of the Latin *præsto,* and are not, as elsewhere, connected with the Latin *prehendere,* nor forms of the past participle of the French *prendre.*

In the same sentence occur in the MSS. the words "*se fit attourne apres def.,*" of which the only translation that suggests itself is, "made an attorney after de-"fault." A little reflection will show that the meaning must be something different. The defendant in the writ of Deceit is attempting to show that the tenant in the original action had been summoned and had practically

admitted the summons. But the fact of making an attorney after the judgment by default would be *nihil ad rem.* It is obvious that some word is required instead of "*def.*" This is supplied by Fitzherbert in the reading "*essone,*" or, as he has printed it, "*essoen.*" With it the sense becomes perfectly clear. The plaintiff in the writ of Deceit had alleged that the essoin had been fraudulently cast without his knowledge, and the defendant answered, "Neither the summons nor the essoin could have been "without your knowledge, for after the essoin you "appointed an attorney to continue the defence of the "action."

Every case numbered in the present, but not in previous volumes.

The cases in the Year-Books published under the direction of the Master of the Rolls have not hitherto been numbered, but numbers are attached to the reports (or Pleas as they are commonly called) published in the older editions, and they are very convenient for purposes of reference. The Year-Books published in the sixteenth and seventeenth centuries seem to have been printed in every instance from a single MS. without collation, and no difficulty could arise with regard to the order. When, however, several MSS. have to be collated, when some contain reports which are not in others, and when those which are common to all the MSS. are not arranged in the same sequence in all, some consideration is required before the numbers can be attached.

Principles on which the sequence has been arranged.

As the Temple MS. has been transcribed and translated (though not printed or published) by Mr. Serjeant Manning, who has attached a number to each report, and as reference may have been made to his numbers by lawyers or historians who have had access to his work by permission of the Benchers, the adoption of any other numbering might cause inconvenience. The Additional MS. No. 25184 agrees, in the main, with the Temple MS. in the order of the cases; so also does the Lincoln's Inn MS., except in certain cases belonging to Easter Term in the thirteenth year, which are in it transferred to Hilary Term. Throughout the whole of the thirteenth year,

therefore, the sequence in the Temple MS. may be taken as representing sufficiently well the sequence of three out of the four MSS. In the two MSS. ("Additional," Nos. 16560 and 25184), in which alone there are any reports of Michaelmas Term in the twelfth year, the order is precisely the same, and therefore one mode of numbering only is possible. It will thus be seen that the order of the cases as they occur in 25184[1] is, with two or three slight variations, maintained, and that Mr. Serjeant Manning's numbering of the Temple MS. is at the same time preserved.

Throughout the whole of the thirteenth year the sequence of cases in the Additional MS. No. 16560 is altogether different from that in the other MSS. It not only contains many cases which are not to be found in the others, but also omits some which they contain. The order of the Temple MS. and of 25184, however, having been adopted for the reports common to the whole four MSS., those found in 16560 alone have been added at the end of each term in the order in which they would occur in 16560 if the whole of those found in the other MSS. were disregarded.

The Court of Common Pleas at York: mandate extracted from the Roll for its removal thence

The fact that the Court of Common Pleas was not definitely fixed at Westminster after the King's consent had been given to *Magna Charta* was noticed in the Preface to the volume of Year-Books 11 and 12 Edward III.;[2] but Michaelmas Term 12 Edward III. (with the reports of which the present volume commences) was the last during which it remained at York. On the first roll of the *Placita*

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[1] The most important variation in this respect between the Temple MS. and 25184 is in the case or cases numbered 55 in Easter Term, and 1 and 2 in Trinity Term. These are more conveniently if less correctly arranged in 25184 as one case in Easter Term. *See* the footnotes below, pp. 273, 283, and 287.

[2] p. xxviii.

to Westminster during the King's pleasure.

de Banco appears the King's mandate to the Justices to remove the Court in the following Hilary Term to Westminster. The words in which it is framed are well worthy of consideration in connexion with the passage relating to Common Pleas in *Magna Charta.* The advice of some of the prelates, magnates, and others of the Council is mentioned, and convenience of locality during the King's absence abroad is put forward as a reason for the change, but it is distinctly stated that the Court was to remain at Westminster only during the King's pleasure. The following is a copy of the enrolment[1]:—

" Placita apud Eboracum, coram J. de Stonore et " sociis suis Justiciariis Domini Regis de Banco, de " termino Sancti Michaelis anno Regni Regis Edwardi " tertii a Conquestu duodecimo.

STONORE.

" Dominus Rex mandavit Justiciariis suis hic breve " suum clausum in hæc verba :—Edwardus, Dei Gratia " Rex Angliæ, Dominus Hiberniæ, et Dux Aquitaniæ, " dilectis et fidelibus suis Johanni de Stonore et " sociis suis Justiciariis nostris de Banco Salutem. " Quia pro celeriori et feliciori expeditione negotiorum " nostrorum quæ tam in cismarinis quam trans- " marinis partibus, ubi jam agimus, nos concernunt, et " pro maturiori consilio in partibus nobis magis pro- " pinquis super negotiis illis habendo, ac ob alias " certas et urgentes causas nos et Concilium nostrum " intime moventes, de avisamento nonnullorum præ- " latorum, magnatum, et aliorum de dicto Concilio nostro " duximus ordinandum quod Bancus noster prædictus " usque Westmonasterium transferatur et ibidem tene- " atur quamdiu nostræ placuerit voluntati, vobis man- " damus quod Bancum prædictum, sumptibus nostris, " salvo et secure, prout expedire videritis, una cum " rotulis, brevibus, et omnibus aliis Bancum prædictum

[1] *Placita de Banco,* Michaelmas, 12 Edward III., R°. 1.

" tangentibus, usque ad locum prædictum transferri
" faciatis, ita quod teneatur ibidem in Octabis Sancti
" Hillarii proxime futuris . . . . . .

" Teste Edwardo Duce Cornubiæ, et Comite Cestriæ,
" filio nostro carissimo, Custode Angliæ, apud Wynde-
" sore, primo die Octobris anno regni nostri duo-
" decimo."

Cognisance of Pleas, and movements of the Bench: illustration from a report and record.

Great prominence is given to the effect of the sojourn of the Court of Common Pleas at York by a report of Michaelmas Term 12 Edward III. (No. 10), which can be rendered intelligible only by the records that illustrate this subject. The Dean and Chapter of York, it will be observed, claimed cognisance of pleas such as they had before the "coming of the Bench." The phrase taken by itself appears quite meaningless; and though it was conjectured that the explanation might be found in the sitting of the Court of Common Pleas at York, it was not without considerable difficulty that sufficient evidence was found to establish the point. It was, however, found at last and is fully sufficient.

On the roll of *Placita de Banco* of Michaelmas Term 12 Edward III., there are several cases in which the Dean and Chapter of York were parties and claimed cognisance of pleas. The reported case is, beyond doubt, that which is recorded on R°. 449, though at first sight, there is little to identify the record with the report. The usual ground, however, for allowing cognisance of pleas was a previous allowance; and in this particular case there is a reference to a roll of the previous year [1] on which the precedent is to be found. It occurs in an assise of Novel Disseisin of which the following is the part material to the point under consideration:—

" Super hoc veniunt ballivi libertatis Beati Petri
" Eboraco, et petunt inde Curiam suam et cognitionem
" istius placiti coram Senescallo Decani et Capituli
" libertatis prædictæ infra ostium Ecclesiæ Beati Petri

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[1] *Placita de Banco*, Michaelmas, 11 Edward III., R°. 297, d.

" Eboraco tenendam. Et dicunt quod dominus Henricus
" quondam Rex &c., proavus domini Regis nunc, per
" chartam suam concessit, pro se et heredibus suis,
" Decano et Capitulo et Canonicis Ecclesiæ Beati Petri
" Eboraco quod si ipsi vel eorum homines placitum
" habeant adversus alios, vel alii adversus eos, vel
" ipsi adinvicem, placitum illud non audiatur nec tene-
" atur alibi quam in ostio prædictæ ecclesiæ Sancti
" Petri Eboraco, salvis placitis Coronæ &c. Et post-
" modum dominus Edwardus nuper Rex, pater
" domini Regis nunc, per chartam suam, recitans quod,
" licet in charta prædicti Henrici Regis expressa men-
" tio non sit facta per quos vel per quem dicta placita
" alia quam de Corona in ostio dictæ Ecclesiæ audiri
" debeant et teneri, et iidem Decanus et Capitulum, a
" tempore quo Justiciarii domini Edwardi Regis patris
" sui de utroque Banco suo, tam videlicet ad placita
" coram ipso quam ad communia placita tenenda
" assignati, nuper apud Eboracum residebant (qui, prop-
" ter vicinitatem loci, placita hujusmodi coram ipsis in
" Bancis prædictis mota, propriis personis suis, in ostio
" prædictæ Ecclesiæ audiverunt et tenuerunt) hucusque
" impediti fuerunt quominus placita hujusmodi habere
" et per Senescallos suos in ostio ejusdem Ecclesiæ
" audire et tenere potuerunt *sicut ante adventum*
" *Justiciariorum prædictorum ibidem fieri consuevit,*
" idem dominus Rex, pater domini Regis nunc, volens
" eisdem Decano et Capitulo et Canonicis gratiam in
" hac parte facere specialem, concessit eis, pro se et
" heredibus suis, quod omnia placita alia quam de
" Corona prædictos Decanum Capitulum et Canonicos
" vel eorum homines in Bancis prædictis in forma
" prædicta tangentia eisdem Decano et Capitulo per
" Justiciarios suos et heredum suorum de Bancis
" prædictis mittantur, et per Senescallum eorundem
" Decani et Capituli qui pro tempore fuerit in ostio
" ecclesiæ prædictæ audiantur et teneantur, *prout ante*
" *adventum Justiciariorum prædictorum apud Ebora-*
" *cum fieri consuevit.*"

There follow a confirmation by Edward III., and letters close of Edward III. to his Justices of the Bench reciting the tenor of the above charters and confirmation, and directing the Justices of the Bench to permit the Dean and Chapter to enjoy their franchise.

Previous allowances are mentioned, and the cognisance is allowed accordingly.

The case is remarkable as an illustration of the old private jurisdictions and of the disputes to which they sometimes gave rise, but it is, perhaps, still more remarkable as showing how the movements of the Court of Common Pleas might raise new and unexpected difficulties.

Pleas of either Bench: jurisdiction of the Superior Courts in actions of assise affected by locality.

It was contended, in opposition to the claim of cognisance of pleas by the Dean and Chapter of York, that their charter gave them cognisance of pleas affecting them, only if moved in one Bench or the other, and that a plea of assise was not a plea of either Bench unless the Bench happened to be in the particular place (*ici*). For the sake of brevity, perhaps, the statement is somewhat too absolutely put. It was, however, an assise of Novel Disseisin which was in question, and that was a plea of either Bench only in certain circumstances. The law governing its relations to the two Benches applied not to a particular place but to a particular county, and was founded on *Magna Charta*;[1]—"Recognitiones de Nova Disseisina, et de Morte Antecessoris non capiantur nisi in suis comitatibus." The assises of Novel Disseisin were in the reign of Edward III. usually arraigned before the Justices of Assise in each county. Not only however the Court of King's Bench, but also, as has been shown, the Court of Common Pleas, might happen to be in any county, and neither of them was necessarily at Westminster. The rule then followed was that if the Court of Common Pleas was in the county in

[1] 9 Hen. III. c. 12.

which any tenements were situated, an assise of Novel Disseisin in respect of those tenements should be brought in that Court. If the Court of King's Bench was in the county, but the Court of Common Pleas in another county, the assise was brought in the Court of King's Bench.[1] It was said, in later times, that if both Benches were in the county, the usage was to bring the assise in either at pleasure, but with regard to this there appears to be some uncertainty.[2] In any case, the point taken with respect to the cognisance of pleas is quite intelligible in relation to the law and practice which undoubtedly prevailed.

Proceedings in actions of assise require explanation.

Though, however, it may be hoped that this case, which at first sight appears to present insurmountable difficulties, has now been made clear, there are other matters relating to proceedings in assise which seem to have been very generally misunderstood, and to be much in need of elucidation. The doctrine which has just been explained that an assise of Novel Disseisin could not be a plea of either Bench, except in the county in which the Bench might be, was clearly a corollary of the two provisions of *Magna Charta* that Common Pleas should not follow the King, and that assises should be taken *in suis comitatibus.* But the assise of Novel Disseisin was brought into use in the reign of Henry II., when courts were not distinguished in the same manner as in later times, when there is no trace of Justices of Assise, and when the Justices in Eyre went their circuits only at long intervals. The foundations of the practice in this action were thus laid at a time when the general plan for the administration of justice was very different from that which it had become in the reign of Edward I. or of Henry III., or even at the end of the reign of John. The difference did not extend only to the constitution of the courts, but new forms of action grew up, and with them definite rules

[1] *Registrum Brevium Originalium,* 196, b.

[2] Fitzherbert's *Natura Brevium,* 409, B.

applicable to different stages of the actions, and all the elaborate devices known as mesne process. In the time of Henry II. and of Glanville there is no indication of any jury process as understood at a later period. The jurors of the Grand Assise upon a writ of Right were elected by four knights; the jurors of a petty assise—as of Novel Disseisin—were summoned at once by the Sheriff by virtue of the original writ of assise. This continued to be the practice, after other kinds of action had come into common use, and after a new jury-process had been settled and applied to them. It is of importance that this should be borne in mind by any one who desires to understand the technicalities of the assise, and the phrases commonly used in relation to it.

Point of assise.

In the case numbered 12 in Easter Term in the present volume (which, though the second report of it is in a somewhat fragmentary state, is a good illustration of proceedings in assise) as well as in many other instances in the Year-Books, it appears that great importance was attached to the question whether certain matters were in or out of "point of assise." It is not easy to state with brevity and precision what was the meaning of this expression, and how the decision of the question, one way or the other, affected the subsequent proceedings. The subject, however, is worth the consideration of any one who wishes to trace out the history of Trial by Jury in its successive stages, though it is unfortunately not only somewhat obscure, but also closely related to other subjects which are still more obscure, which have attracted attention on the continent of Europe and in America, as well as in England, and which have produced controversies not altogether devoid of warmth.

Controversies relating to this subject.

It would not be becoming to enter into any controversy in these pages, but it seems to be a duty to state the result of independent researches which

may illustrate the subject. It may also be permissible to say that, in addition to the original authorities (records, reports, and the older law treatises), a large number of more recent and of modern books have been attentively considered, and that if the conclusions now expressed are in many respects at variance with what has been written elsewhere, they are put forward as conclusions formed upon evidence which was not before the writers and which might possibly have modified their opinions. Those who wish to know what is to be said from the various points of view of various authors may consult with advantage the works of Biener,[1] Bigelow,[2] Blackstone,[3] Booth,[4] Brunner,[5] Coke,[6] Fitzherbert,[7] Forsyth,[8] Gilbert,[9] Gundermann,[10] Lilly,[11] Reeves,[12] and Spence.[13]

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[1] *Das englische Geschwornengericht* von Friedrich August Biener. This and other works by the same author gave rise to some controversial writing in Germany. Herren Gundermann and Brunner pointed out that he had not sufficiently distinguished the Grand Assise from the Petty Assises.

[2] *History of Procedure* (especially p. 125, pp. 170–191, pp. 337–8), and *Placita Anglo-Normannica.*

[3] 3 Bl. *Com.*, 184–189.

[4] Booth's "*The Nature and Prac-* "*tice of Real Actions,*" especially pp. 213–214, and pp. 262–295.

[5] *Die Entstehung der Schwurgerichte* von Dr. Heinrich Brunner, especially pp. 293–300, and pp. 413–427.

[6] Co. Litt., 153–155, &c.

[7] Fitzherbert's *Natura Brevium.*

[8] Forsyth, *History of Trial by Jury*, especially pp. 139–149.

[9] Gilbert's *History and Practice of the Court of Common Pleas*, especially pp. 58–60. He remarks that an assise was said "*transire* "*in juratam,*" but his is the only work in which I have seen that expression used instead of "*vertitur* "*in juratam.*"

[10] *Englisches Privatrecht* von Dr. Joseph Ignaz Gundermann, especially pp. 397–403.

[11] Lilly's Reports (Introduction), in which there is a very full account of the manner of arraigning an assise of Novel Disseisin in later times, for which *see*, also, 1 Keble *Rep.* 3, and 3 *Modern Rep.* 273.

[12] *History of the English Law*, and *see* Mr. Finlason's Notes at pp. 353 and 354.

[13] Spence's *Equitable Jurisdiction of the Court of Chancery. See* especially Chap. 3, vol. I., pp. 110–131. It is remarkable that in this chapter touching upon the *Curia Regis*, the *Assisa*, and the *Jurata* there is not a single reference to the *Rotuli Curiæ Regis*

Assisa and *jurata* not distinguished in the reign of Richard I.

Many writers [1] have most laboriously worked out the history of the Norman modes of trial in order to illustrate the origin of the English *assisa* as distinguished from the English *jurata*. For the present purpose it is unnecessary to travel over that ground, because it may be clearly shown that in the earliest English records no distinction between the two terms was recognised, and that, whatever effect Norman influence may have had after the reign of Richard I., the words *assisa* and *jurata* were in that reign only different modes of expressing the same thing, and were interchanged at the pleasure of the officers of the King's Court. Nothing could therefore be gained by extending the inquiry beyond the time of legal memory, or at any rate beyond the time of Glanville.

Origin of the phrase "*assisa vertitur in juratam*."

There is no doubt that the expression commonly used by Bracton and Fleta, "*assisa vertitur in juratam*," (as well as Britton's equivalent French) conveyed a very definite meaning to those writers and their contemporaries, but it was a phrase which came into use after the time of Richard I., and referred to a distinction very different from that which has commonly been attributed to it. The origin of it is, perhaps, to be traced in the growth of the numerous actions commenced by writ of *Præcipe quod reddat* (in which issues of fact were decided by jury), as distinguished from those commenced by writ of assise. The subject, however, can be rendered intelligible only by actual cases examined in chronological order.

Assisa and *jurata* in the *Rotuli Curiæ Regis*.

The earliest English judicial records known to exist are the *Rotuli Curiæ Regis* of the reign of Richard I. They are rich in valuable information, but they have

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either printed or otherwise. The views of any one who had not consulted those rolls, however learned he might be, would necessarily differ from those of one who had consulted them, and he would be disposed to draw a distinction between the word *recognitor* and the word *juror*, which never had any existence in fact.

[1] *See* especially Biener, and Brunner, *ubi supra*.

been little used by historians. The reason probably is that none of them have been printed *in extenso,* and those which have been printed in type supposed to reproduce the abbreviations of the rolls are not intelligible except after a long and careful study of the mediæval systems of writing.[1] They afford numerous illustrations of the early use of the words *assisa* and *jurata ;* and without their aid it is hardly possible to understand the later writers or the later cases.

Illustrations from cases of the time of Richard I.

Among the writs in Glanville is one *de morte antecessoris* [2] which agrees in form with that of the assise of Mort d'Ancestor of a later period, and it is reasonable to suppose that this was the writ by which an action of Mort d'Ancestor was commenced from the time of Glanville downwards. According to the *Rotuli Curiæ Regis* of the reign of Richard I.,[3] the Abbot of Colchester pleaded, against an assise of Mort d'Ancestor, a deed by which the grandfather of the claimant had given lands to the Church of St. John at Colchester, a confirmation of the gift by the claimant's father, and a general confirmation of all his father's and grandfather's gifts to the church by the claimant himself. On behalf of the Abbot it was said that the assise ought not to proceed, and it was added: "et, si *assisa* "debet inde fieri, ponit se super *juratam* Willelmi de "Hobrige et aliorum legalium hominum de ipso vis-"neto; et si Willelmus [the claimant] hoc concedere "noluerit ipse offert Domino Regi j marcam argenti "ut habeat de senioribus et legalioribus hominibus de "ipso visneto ad faciendam ipsam *assisam.*"

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[1] Biener had not seen the *Rotuli Curiæ Regis* when he wrote the section headed *Unterschied der assisa und jurata* in vol. I. of *Das englische Geschwornengericht.* See vol. III., p. 6. Both Gundermann and Brunner were acquainted with the published *Rotuli Curiæ Regis,* but have made no reference to them in the passages relating to the distinction between *assisa* and *jurata.*

[2] Lib. 3, c. 3.

[3] Printed vol. I., p. 354.

As in this, so in the following instance, the words *assisa* and *jurata* are used indifferently in the *Rotuli Curiæ Regis.* A[1] plaint of Novel Disseisin is brought by Joan, widow of Henry de Langeberge. The defendant denies the disseisin. This makes an issue strictly in point of assise, according to the doctrine of a later period. The defendant, however, puts himself "super "*juratam*[2] visneti, et ipsa Johanna similiter ponit "se super *juratam* visneti. Dies datus est eis ad "*assisam* illam recipiendam, &c." In this case the officers of the Court describe the *jurata* as an *assisa,* although the parties have put themselves not upon the *assisa,* but upon the *jurata* by common consent. This consent is according to Bracton, Fleta, and Britton precisely what is essential for the conversion of an *assisa* into a *jurata.*

In the same rolls occurs an *assisa*[3] of a very remarkable kind. The action was one which must have been brought by some kind of writ of Dower. One Emma demanded against one William her reasonable dower of her late husband's freehold in certain places. William's defence was that the husband had given her, on the day of the marriage, "quandam villam" in satisfaction of her dower, and that she was seised of it. The gift was denied by Emma, but not the seisin. William produced a *secta,* but, in case that should not suffice, put himself "super probos homines qui illi interfuerunt "desponsationi, et super visnetum illum." Emma also "produxit sectam quæ suæ interfuit desponsa-

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[1] 1 *Rot. Cur. Reg.* 55.

[2] The word above printed *juratam* is written *jur.* But there cannot be a doubt as to the correct extension, as the usual form is *ponit se super juratam* or *super assisam,* as the case may be.

[3] 1 *Rot. Cur. Reg* .145. This case has been cited by Mr. Bigelow (*History of Procedure,* 256) in illustration of pleadings.

" tioni et, super sectam quam produxit, ponit se super " legalem *juratam* comitatus illius." The Court ruled thus:—" Fiat *assisa* illa per probos homines de visneto " illo sicut utraque pars concessit." Here again the consent of the parties is an essential feature of the matter, and yet the *jurata* is described as *assisa*. There does not appear to be any assise of dower mentioned in Glanville, Bracton, Fleta, or Britton, except once in an incidental manner in Britton, and that in a passage of which the meaning may perhaps be open to doubt.[1] In two other cases of dower in the reign of Richard I.[2] both parties put themselves *super recognitionem visneti*.

An assise of Novel Disseisin[3] was in the same reign put in respite, "pro defectu recognitorum," to a certain day. "Et Vicecomes tunc faciat venire tot et tales " quod *assisa* non remaneat; et respondeat quare " posuit tales recognitores in *jurata* qui terram non " tenuerunt." Here the *assisa* is described as a *jurata*.

It would be tedious to cite more cases of the same kind, and it seems clear beyond all possibility of doubt that, whatever distinctions may have been introduced at a later period, the words *assisa* and *jurata* were in the reign of Richard I. convertible terms. The *Magna Assisa* not being applicable to a possessory action was quite distinct, and was always mentioned by that name. The word *recognitio* is sometimes used as a synonym for *assisa* or *jurata* by a very intelligible transition of meaning, as the party put himself upon the verdict or *recognitio* of the *Assisa* or *Jurata*.

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[1] Britton Lib. I., c. 3 (Nichols, vol. I., p. 19). This passage (in which various assises, including assise of Dower, are mentioned) relates to proceedings before the Justices in Eyre. An ordinary assise of Novel Disseisin lay for Dower of which a dowress had been disseised; but seisin and subsequent disseisin were not alleged in the case above cited.

[2] 1 *Rot. Cur. Reg.*, 415 and 416.

[3] 1 *Rot. Cur. Reg.*, 387.

In the reign of King John also the words *assisa* and *jurata* were sometimes, if not always, used indifferently. The following case[1] may suffice to prove this point:—

Assisa and *jurata* used indifferently during a part of the reign of King John.

"*Assisa* quædam venit recognitura quis advocatus
" etc. præsentavit ultimam personam ad ecclesiam de
" Colred quæ vacat ut dicitur, cujus advocationem
" dominus Rex clamat ad se pertinere, ratione Archi-
" episcopatus qui est in manu sua, versus Priorem de
" Dovra, qui venit, et non sustinens *juratam* inde fieri
" concessit quod dominus Rex præsentet ad ecclesiam
" illam ratione Archiepiscopatus ad præsens, salvo
" jure suo et ecclesiæ suæ, cum loqui inde voluerit,
" et cum aliquis vocatus fuerit ad sedem Archiepis-
" copatus."

No distinction between *juratores* and *recognitores* in the earlier rolls.

The custom of drawing a distinction of name between the individuals composing an *assisa* and those composing a *jurata* (not being an *assisa*) — between the *recognitores* of one and the *juratores* of the other — had not yet grown up. Any *jurata* and any *assisa* might equally be put in respite during the reign of King John *pro defectu recognitorum.* This is the common form in the roll to which reference has already been made, and the expression *pro defectu juratorum* is very rare as applied to the constituents either of an *assisa* or of a *jurata.* In the reign of Edward I., however, and perhaps in the reign of Henry III., the constituent members of the *assisa* are most commonly called *recognitores,* and the constituent members of the *jurata* (not being an *assisa*) are most commonly called *juratores*

[1] From a roll in the Public Record Office known as "*Coram* "*Rege*" Roll, Easter, 7 and 8 John, R°. 1. It resembles the later *Placita de Banco* more even than any of those printed by Sir Francis Palgrave under the name of "*Rotuli Curiæ Regis;*" and the words *Coram Rege* are certainly not more applicable to it than to them. Extracts from this roll have been printed in the "*Placitorum Abbreviatio*" published by the Record Commissioners, but not the above passage, nor many others which might be cited in illustration of legal and constitutional history.

before they are sworn, though both, after being sworn, give their verdict as *juratores*. This distinction, however, though it may have some connexion with the distinction between *assisa* and *jurata*, is one which may easily be shown to have been of no real importance.

The function both of the *assisa* and of the *jurata* always was *recognoscere*.

The function both of the *assisa* and of the *jurata* in civil actions always was *recognoscere*. The *assisa venit recognitura*, and the *jurata venit recognitura*; the *jurata* in criminal matters also, it may be added, came *ad recognoscendum*. It is a remarkable fact, too, that notwithstanding the great change in the character of trial by jury which was effected in the lapse of ages, the legal definition, in the records, of the functions of a jury always remained the same. Even when the old forms were translated into English, in consequence of the Statute 4 Geo. II. c. 26., it was still expressed (by a not very happy rendering of the original) that a jury was to come "to recognise, &c.," and the phrase has survived into the nineteenth century.

Indications of a tendency to distinguish between *assisa* and *jurata* (not being an *assisa*) before the end of John's reign.

In the reign of King John, although, as has been already stated, the words *jurata* and *assisa* were sometimes, at any rate, used interchangeably, cases occur which, either by accident or because a change was being gradually introduced in practice, are consistent with a distinction between an *assisa* and a *jurata* (not being an *assisa*), though they are not sufficient of themselves to prove that the distinction was yet recognised. The following [1] is an instance :—

Cases in that reign illustrating the substitution of a new body of jurors for the original

"*Jurata* venit recognitura si Walterus de Gersin-
" done tenuit, die qua Baldewinus de Toony tulit
" *assisam mortis antecessoris* versus eum, xvj. acras
" terræ cum pertinentiis in Gersindone, sicut ipse
" clamat versus eum per breve de *assisa*. Juratores
" dicunt quod Walterus tenuit xj. acras terræ arabilis

[1] From the (so-called) *Coram Rege* Roll, Easter, 7 and 8 John, R°. 11.

"et j acram prati, et pasturam quandam; nesciunt "quantum continet. Unde consideratum est quod "*assisa* resummoneatur. Ideo sit in Octabis Sancti "Johannis ad faciendam *assisam mortis antecessoris* "*quæ prius arrannata fuit inter eos.*"

assise to try a particular question of fact.

In this case it seems that, after the assise of Mort d'Ancestor had been brought, issue was joined on a matter of fact as to whether the tenant was on the day of the purchase of the writ seised of a particular number of acres of land in a particular place. It might have been supposed that the assise-men originally summoned would have ascertained the fact by the view; but the tenant might have been seised on the day of the view and not on the day on which the writ was purchased, or seised on the day on which the writ was purchased and not on the day of the view. There was, at any rate, some question which had to be decided by a jury independently of the assise summoned by virtue of the original writ. As soon as the fact in dispute was ascertained, the original assise-men were re-summoned to give a verdict on the points of the assise.

Another case illustrating, if not the conversion of an *assisa* into a *jurata*, at least the substitution of one set of jurors for another, in order to decide a particular matter of fact, occurs on the same roll.[1] It may be thought of interest, as illustrating incidentally some of the manners and events of the period:—

"*Assisa* venit recognitura si Waleranus pater Ro-"berti saisitus fuit in dominico suo ut de feodo de "quarta parte unius jugi terræ cum pertinentiis in "Hilles, die qua iter Peregrinationis versus Jerusalem "arripuit, in quo obiit, ut dicitur &c. Quam terram "Robertus clericus de Pacheham tenet, qui venit et "dicit quod ipsi sunt de uno stipite ita quod præ-"dictus Waleranus fuit frater ipsius Roberti clerici,

[1] The (so-called) *Coram Rege* Roll, Easter, 7 and 8 John, R°. 1, d.

"et ideo non debet assisa fieri; et prædictus[1] . . . .
"dicit quod assisa non debet inde procedere quia, cum
"Waleranus pater Roberti iter suum arriperet versus
"Jerusalem, ipse accessit ad matrem suam, cujus
"hereditas illa terra fuit, et impetravit ab ea quod
"ipse invadiaret terram illam ad terminum trium
"annorum, et ita invadiavit eam, et post terminum
"illum reversa est terra illa ad matrem suam, et inde
"obiit saisita. Postea idem Robertus filius Walerani
"et Robertus clericus, per dominum illius feodi, et per
"consilium amicorum suorum, partiti sunt illud tene-
"mentum, ita quod quarta pars unius jugi remansit
"utrique eorum, et capitale masagium remansit Ro-
"berto clerico secundum consuetudinem de Kent
"sicut de Gavelkinde. Et inde ponit se super lega-
"lem *juratam* patriæ et super *juratam* illorum qui
"interfuerunt partitioni factæ inter eos. E contra
"Robertus dicit quod Waleranus pater suus saisitus
"fuit de feodo illo multo tempore antequam iter
"arriperet, et defendit quod nunquam partita fuit
"terra illa sicut Robertus dicit, et ponit se super
"*juratam* suam, et non defendit quod sint de uno
"stipite. Postea consideratum fuit quod xij. legales
"homines per quos rei veritas sciri possit summone-
"rentur utrum terra partita fuit inter eos sicut Ro-
"bertus clericus dicit sicut Gavelkinde an non. Dies
"datus est Dominica ante Ascensionem. Et tunc
"veniat *Jurata*."

Assisa and *jurata* both became ambiguous terms.

It will be observed that, in the cases cited, when an issue is joined which, according to Bracton, Fleta, and Britton, would have the effect of turning an *assisa* into a *jurata*, the actual result is not to change the functions of the twelve men summoned in the first instance, but to substitute other twelve for them. This is the clue to the meaning of the expression *assisa vertitur in jura-*

[1] There is a hole in the parchment where the name should be.

tam. It was pointed out by Littleton and by Coke that the word *assisa* is a *nomen æquivocum,*[1] and it may be added that the word was used in more senses than either of them pointed out. Another very important fact seems, however, to have escaped attention — that the word *jurata* is also a *nomen æquivocum.*[2] As the word *assisa* — which, in one sense, was a mode of trial for settling certain alleged grievances — by a natural transition came to mean the body of jurors who pronounced upon the particular fact or facts in dispute, so conversely the *jurata,* which seems to have signified originally any body of jurors sworn to speak as to a particular question of fact, came to mean a kind of action or a mode of trial in which questions of fact were to be decided by a jury not summoned in virtue of an original writ of assise. The word *assisa* was a *nomen æquivocum* as early as the time of Glanville;[3] the word *jurata,* though including the *assisa,* does not seem to have been used to express a particular mode of trial or class of actions before the reign of Henry III., but it must certainly have been used in this sense by Bracton and the writers of his school, for otherwise his language is inconsistent with itself.

As applied to a sworn body of jurors an

So far as the words *jurata* and *assisa* were applied to the body of jurors, it is demonstrable that *jurata* was commonly used to express the twelve men of the *assisa,*

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[1] Co. Litt., 154, b.

[2] There is a note in Mr. Justice Stephen's *History of the Criminal Law of England* (vol. 2, p. 206) which, while being applicable to Coke, for whom it was intended, is applicable also to many writers who have preceded and succeeded him: —"This is admirably brought out "by Hobbes in his *Dialogue of the* "*Common Laws* (works VI., 1-"160). 'Sir Edward Coke does "'seldom well distinguish when "'there are two divers names for "'one and the same thing; he "'makes them always different.' "He might have added that when "one name applies to two things "he makes them always the "same."

[3] The word is most commonly used by Glanville in other senses, but in one passage it is used for the recognitors or jurors:— "ita quod assisa sit inde summo-"nita" Lib. IV. c. 11.

assisa was from first to last a *jurata.*

not only in the reigns of Richard I. and John, but also through subsequent reigns down to the very date of the Year-Books included in the present volume. The most valuable series of records for this purpose is that of the *Redisseisin Rolls* in Chancery, in which the word *jurata* is commonly written without abbreviation and employed in such a manner as to leave not the slightest doubt of the meaning conveyed by it. The following is a writ of Redisseisin from that source:—

Illustration from the Redisseisin Rolls.

"Rex Vicecomiti Somersetiæ Salutem. Monstravit "nobis Thomas de Marleberge quod, cum ipse nuper "in Curia nostra, coram dilecto et fideli nostro Johanne "Inge, et Johanne Trevaignoun, nuper Justiciariis nos- "tris ad assisas in Comitatu prædicto capiendas "assignatis, apud Somerton per breve nostrum recu- "perasset seisinam suam versus Johannem de Urtiaco "de centum solidatis redditus cum pertinentiis in "Puttenye *per recognitionem assisæ Novæ Disseisinæ* "ibi inde inter eos captæ, præfatus Johannes ipsum "Thomam de prædicto redditu iterum injuste disseis- "ivit. Et ideo tibi præcipimus quod, assumptis tecum "Custodibus Placitorum Coronæ nostræ et xij. tam "militibus quam aliis liberis et legalibus hominibus "de Comitatu tuo, tam de illis qui in *prima jurata* "fuerunt quam aliis, in propria persona tua accedas "ad tenementum unde redditus ille provenit, et per "eorum sacramentum diligentem inde facias inquisi- "tionem, &c."

Innumerable lawyers, in later ages, have spoken of "the jury of the assise," and it seems as clear as anything can be made by human language that, as an *assisa*

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[1] *Redisseisin Roll*, 14 Edward III., first entry. In the 12th and 13th years also the same form occurs (the first entry under each year). The series of rolls commences with the 14th year of the reign of Edward I., and the second entry on the roll relating to that year is in precisely the same form, which may be seen also in the *Registrum Brevium Originalium* (as printed A.D. 1531), fo. 206, b.

(in the sense of a sworn body of recognitors or jurors) was already a *jurata*, it could not by any conceivable process be converted into that which it already was. Nor, if it be said that the jurors of an assise were not a *jurata* until sworn, is the difficulty overcome. In one sense, it is true, the act of swearing would turn an *assisa* into a *jurata*, but that is not the sense in which Bracton and his contemporaries used the expression, for they pointed out a distinction between the form of oath when an *assisa* was in question and the form of oath when a *jurata* was in question.

In what manner an *assisa* of Darrein Present-ment was turned into a *jurata*: instance from the *Placita de Banco*.

Bracton's abstract and general statements, however, can be understood only by the test of concrete and particular instances, and I have been fortunate enough to discover precisely what was done in some of the instances in which, according to him and to Fleta and Britton, an *assisa* was turned into a *jurata*. A good illustration occurs in an assise of Darrein Presentment—an action which could in their time be tried only in the Court of Common Pleas, and not, like certain other assises, before the Justices of Assise. It is stated by them[1] that when the issue taken was not what patron last presented to the church, as in the writ of assise, but simply whether a particular person had presented since the making of an admitted charter, then the assise was to run in manner of a *jurata* by consent of the parties ("tauntost courge lassise en manere de juree par le "assent des parties"). What was true with respect to a charter or deed was of course true with regard to any kind of conveyance. A case in the Common Pleas in Michaelmas Term 44-45 Henry III.[2] (Lodnes *v.* the Prior of Lewes) shows precisely what occurred.

The enrolment commences in the usual form: "*Assisa* "venit recognitura" what patron last presented. Through

[1] Britton, Lib. IV., c. 4, § 7. (2 Nichols, 188); Bracton, 243; Fleta, 325.

[2] *Placita de Banco*, Mich. 44 (*incip.* 45), Henry III., R°. 27, d.

the pleadings, however, the parties arrive at an issue whether the plaintiff's father or the defendant's predecessor presented a certain clerk after a certain admitted fine had been levied. With regard to this the defendant "*ponit se super patriam,*" and the plaintiff *similiter.* The word *patriam* is of especial importance here, as at this period a very clear distinction appears in the rolls between the *patria* and the *assisa.* In certain cases the parties put themselves on the *assisa,* in certain others on the *patria;* and when they put themselves on the *patria* the issue was out of point of assise, and, as Bracton would have said, the *assisa* was turned into a *jurata.* But the jurors originally summoned did not undergo any transmutation whatever; they were simply dismissed. This is perfectly clear in the case now under consideration:—"Et ideo præceptum est Vicecomiti quod "*venire faciat* hic a die Sancti Martini in xv. dies, "xij., &c., per quos, &c., et qui nec, &c. ad recognos-"cendum in forma prædicta." This is regular jury-process, precisely as it appears in later times—the judicial writ of *Venire facias* applicable to a jury required to decide a question of fact put in issue upon the pleadings, as distinguished from the original writ of assise upon which the sheriff was to summon the recognitors of the assise.

A new jury decided a new issue, if entirely distinct from the points of the writ.

Here then we have a case in which we know from the old writers that the *assisa* was turned into a *jurata,* and in which it is perfectly clear that the change effected was not a change in the functions of the jurors originally summoned, but a change which had the effect of sending them back to their homes, and causing others to come by a wholly different process to decide a question newly put in issue.[1]

[1] Th same result followed when ssue was joined simply on the question whether the defendant's ancestor was under age at the time of the last presentation. See *Year-Books* (M. R. series) 33–35 Edward I., pp. 242–243.

In this instance the new jury came on the appointed day and gave their verdict, and judgment followed immediately, without any question of fact having been put to the original assise-men. The *assisa* was turned into a *jurata*, and was decided as a *jurata*.

But the jurors of the original assise decided, whenever the points of the writ were in issue: instance from the *Placita de Banco*.

It may be useful to cite from another roll of the same date[1] another case in which the facts were put to the assise-men originally summoned, though at first sight it might seem that the issue was out of point of assise. In an assise of Mort d'Ancestor the tenant pleaded that the ancestor was a villein and held in villenage, and that the descent was not that which was alleged in order to make the demandant the heir. This, it will be observed, was not a simple plea that the ancestor was a villein, for had it been limited to that point, and had the demandant joined issue thereupon, there seems to be no doubt, from the language of Bracton,[2] that the *assisa* would have been turned into a *jurata*. But issue was joined on the points of the writ generally, and the villein-status or otherwise of the ancestor would then probably be regarded only as part of the general question whether the ancestor was seised as a freeholder, which was one of the points of the writ. Thus on either hand the parties put themselves *super assisam*. The jurors of the assise found for the demandant, stating expressly that the ancestor was a free man, and died seised as of fee, and that the demandant was his next heir. In this case the assise was taken as an assise, and the jurors were liable to attaint.[3]

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[1] *Placita Coram Rege*, Mich. 44 (*incip.* 45), Hen. III., R°. 5.

[2] Bracton (215, b. – 216). This passage relates to the plaintiff in assise of Novel Disseisin, but would probably apply equally to the ancestor on whose death the demandant claimed in Mort d'Ancestor. It may be mentioned here that, in referring to Bracton, I have in all cases given the number of the folio in the editions of 1569 and 1640, in which the numbering of the folios is identical. These references will serve also for Sir Travers Twiss's edition, in which the passages may be found by means of the side-notes.

[3] Britton, Lib. IV., c. 10, § 3.

Assisa and *patria*: actions of Petty Assise, and of *Præcipe quod reddat*. Original writ of Assise, and Jury-process.

It may, perhaps, be thought that, if *assisa* and *jurata* were used indifferently in the reign of Richard I., *assisa* and *patria* were used indifferently in the latter part of the reign of Henry III. But the distinction between *assisa* and *patria*[1] is clearly and uniformly marked in the rolls. In the reign of Henry III. the jury-process, as distinguished from the original writ of assise, had been fully established, and, no doubt, contributed something towards the settlement of the phrase "*assisa vertitur* "*in juratam*," and of the more tangible difference between *assisa* and *patria*. An action in which the facts were to be ascertained through a body of men summoned by virtue of an original writ to pronounce upon issues mentioned in that writ was regarded as belonging to a class different from actions in which the issue of fact to be evolved out of the pleadings was unknown at the time of commencement, and had to be determined by a body of jurors to be brought together at some future time by virtue of a judicial writ of *Venire facias*. The introduction of various new forms of action, and especially of those commenced by writ of *Præcipe quod reddat*, was probably the cause of the introduction of the judicial jury-process, for while they resembled the actions of assise in the calling-in of twelve jurors, if necessary, to state the facts, upon oath, they presented material points of difference in relation to the time at which the jury was brought into Court, and to its functions when brought.

If an action of assise of Novel Disseisin be taken as an example, it is found that the jurors of the assise were supposed to come into Court when the cause was to be heard, and to come "*parati recognoscere*," after having had view of the tenements in dispute. The

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[1] In the Statute 3 Edward I. (Westm. 1,) c. 40, the distinction then established between *assisa* and *patria* is indicated in the words "*averrer per assise ou per pays*."

writ might then be abated,[1] or the action might fail on a point of law, or the *assisa* might be turned into a *jurata*, or there might be interlocutory judgment of "*assisa capiatur*." It is to be remarked that the assise might be taken even though the defendant did not appear. It was taken either upon his default, or after his defence had been stated. If taken by default, it was necessarily taken in the simplest form, and the verdict was given on the points of the writ—to the effect that the defendant had or had not disseised the plaintiff. Even this, however, was not quite so simple a question as has sometimes been supposed, for in order to know whether the plaintiff had been disseised it was necessary to know whether he had previously been seised in such a manner that he could be disseised. The jurors accordingly had to say definitely whether he had or had not been so seised, and, if so, whether he had or had not been disseised; and this was a finding on the points of the writ.

On the other hand, in the actions of *Præcipe quod reddat*, it might never be necessary to call in any jurors at all. If the tenant made default, from the beginning,

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[1] Dilatory pleas were (or were supposed to be) discountenanced in the *festinum remedium* of assise There might, nevertheless, be a good plea in abatement of a writ of assise. An instance occurs, at p. 68 of the present volume, in which a writ abated for misdescription of place and other reasons. In this case it seems that the question of fact as to whether a manor did or did not extend into a particular vill was put to the assise-men originally summoned, and that the writ was adjudged bad on their answer. This illustrates the functions of the jurors of assise, but there appears to be a clear distinction between their finding in this matter and the verdict of jurors either after an assise had been awarded, or on a question of fact arising from matters pleaded in bar of the assise. In case of abatement nothing was definitely settled except that the plaintiff's writ was bad; and he was free to bring another action of assise by a better writ, if he pleased. The use made of the jurors, however, may, perhaps, be regarded as an indication of a tendency gradually developed to decide, as far as possible, all questions of fact not involving a change of venue through the assise-men originally summoned.

in such a manner that his default was irreparable, judgment might be given for the demandant without vérdict—an event which could never happen when the action was and continued to be an *assisa*. Again, in the actions of *Prœcipe quod reddat*, if there arose a question of fact to be decided by a jury, it was not expressed in the *Venire facias*, as in the writ of assise, that the jurors were to have the view, though they might subsequently have it upon demand of view by the parties. They were to be persons *per quos rei veritas melius sciri poterit*, and thus, like the assise, in the character of witnesses. But their testimony must commonly have been very much of the nature of hearsay evidence. They were not supposed to speak necessarily from their own knowledge, "de lour "ascient," as the jurors of the assise were, but "ex cre-"dulitate." So also—to take the familiar instance of an *assisa* brought in one county, and turned into a *jurata*, with change of venue, upon the plaintiff's denial of a deed pleaded by the defendant and purporting to be executed in another county — the jurors of the foreign county, being associated with the witnesses whose names appeared in the deed, stated to the best of their belief whether the deed was the plaintiff's or not. They might or they might not have some knowledge of the matter apart from that which was communicated to them by the witnesses named. They stated the facts to the best of their belief.

The phrase *assisa vertitur in juratam* had reference primarily to a change in the nature of the action, mode of trial, or issue.

There was thus in the reign of Henry III. a broad distinction between the functions of a jury trying the points of an assise, and the functions of a jury trying any other issue, though all juries always had been and always afterwards were known by the name of jury or in Latin *jurata*. But it may be considered certain that when use was made of the expression "*assisa vertitur in juratam*" the prominent idea was the change effected by the pleadings in the nature of the action, mode of trial, or issue, and not any change of functions in the persons who had been summoned by virtue of the writ of

assise. The jurors of the *assisa* being always a *jurata*, whenever they were sworn, could not possibly be said to become a *jurata* through the issue joined upon the pleadings, or when a new jury was called in give a verdict upon a new issue. It is, indeed, strange that the words of Bracton, Fleta, and Britton, could ever have been supposed to have such a meaning.

A careful study of the forms of expression used by Bracton, Fleta, and Britton shows this to be the meaning.

The words "*vertitur in*" used by Bracton and Fleta, the words "*tourne en*" used by Britton, are so frequently applied by those authors to other matters as to supply, almost without further inquiry, the true meaning of the phrase *assisa vertitur in juratam.* It was in their time a recognised principle that an action commenced in one way might, from the circumstances of the individual case, as brought out by the pleadings, partake of, or be converted into, the nature of an action commenced in another way, if the tenant consented. The following passage relating to writs of Entry illustrates this point[1]:—

"Si omnino [tenens] ingressum nitatur defendere, "tunc locum habet jurata vel exceptio; si super jure "descensus versus ipsum narratorem defendi elegerit, "locum habet duellum vel magna assisa, . . . et in "omnibus sicut in brevi de recto, eo quod per defen-"sionem tenentis mutatur [in] natura[m][2] brevis de "recto. Et quandoque contingit, e converso, quod breve "de recto *vertitur* per narrationem et defensionem "tenentis in naturam brevis de ingressu, cum vide-"licet fiat mentio de ingressu post descensus in "narrando, quod quidem tenens omnino defenderit "merum jus omittendo, et quo casu locum non habe-"bit duellum, magna assisa, essonium de malo lecti, "sed tantum jurata per affirmationem ingressus et "negationem . . . Si quis primo in judicio pro-

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[1] Fleta Lib. V., c. 36.

[2] The words "mutatur in natu-"ram" appear in Fleta (as printed) "mutatur natura." This is obviously a mistake which the context supplies the means of rectifying.

" posuit ingressum, et postea docuerit de mero jure
" suo per descensum, sic *vertitur* breve de ingressu
" in naturam brevis de recto, si tenens hoc voluerit,
" aliter non, et cum hoc voluerit, et viam defensionis
" juris per ingressum omiserit, statim conjungitur una
" actio cum alia, ita qualitercunque terminetur loquela
" per juratam vel alio modo."

There is a similar passage in relation to the writ of cosinage:[1] "Inter cætera autem dispiciendum est an
" brevia de consanguinitate, avo, vel proavo possint
" per narrationem *verti* in naturam recti vel e con-
" verso, sicut accidit de brevi de ingressu; nam in
" omni narratione in qua adjicitur hoc verbum (de
" jure) statim ingreditur per hoc probatio; per hoc
" enim quod dicit quis quod talis seisitus obiit in
" dominico suo ut de feodo deducit in judicium totum
" jus possessionis, et per hoc quod addit "de jure"
" deducit in judicium jus proprietatis, et sic per con-
" sequens duo jura. Solutio: hæc autem brevia nihil
" determinare poterunt nisi jus possessionis, et, si
" petens in narratione sua procedat ad jus merum
" ad quod natura brevis de possessione se non ex-
" tendit non magis quam assisa mortis antecessoris,
" per hoc merito cadit breve pro vitio narrationis nisi
" hoc de voluntate tenentis eveniat; nunquam enim
" *vertitur* causa possessionis in causam proprietatis
" nisi ex voluntate tenentis."

The occurrence of the word *vertitur* in the passages last quoted (coupled with the necessity for the consent of the tenant) appears to be strictly analogous to its use in the phrase *assisa vertitur in juratam.* The change indicated is a change in the nature of the issue to be decided, and the distinction drawn in the latter phrase is probably the same as that drawn between what is in point of assise and what is out of point of assise. It will be remembered that in the assises of Novel Disseisin

[1] Fleta, Lib. V., c. 8, § 8.

and Mort d'Ancestor there was no declaration or count beyond "the points of the writ." If in the defendant's answer, plea, or defence, or in the subsequent pleadings, there arose a question of fact which was not within "the points of the writ," and upon which issue could be taken alone, then it might be said "assisa vertitur in juratam," "lassise se change en juree," "lassise est tourne "en juree," "capiatur assisa in modum juratæ," "lassise "est prise en manere de juree," "ore sumes nous "hors de point dassise," &c. All these expressions refer to similar circumstances, but they are illustrated by others of a more precise nature; thus sometimes "assisa *vertitur* in perambulationem"; and in Britton[1] occurs the more remarkable passage "De chemin real "ou de autre semblable chose chete touz jours assise, "et soit *tourne en* trespas, et soit enquis del trespas "et del purpresture, et solom le verdit se face le "jugement."

It may be considered absolutely certain that these last words of Britton describe a change in the nature of the action. The assise (that is to say the action) of novel disseisin is turned into an action of trespass. In this case it might seem that it would have been equally correct to say *tourne en juree*, because the issue of fact in trespass being triable by a *jurata* and not by an *assisa* the meaning would have been expressed, though not so precisely, by the general term. The doctrine however, was that the defendant in trespass might, at his peril, refuse to put himself on a jury. For this reason probably the particular action is here mentioned instead of the more general term *jurata*, and from this instance, together with those in which other actions are

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[1] Lib. II., c. 19, § 2. And see Bracton, 210, b., and Fleta, Lib. IV., c. 14, § 2, where the words are "*vertitur assisa in juratam* ad "inquirendum de transgressione.

said to be turned into actions of a different nature, it may reasonably be inferred that the expression *assisa vertitur in juratam* refers primarily, at any rate, to a change in the nature of the action, or mode of trial, or issue, and to that only.

This interpretation is consistent with the *Statutum Walliæ.*

This interpretation of "*assisa vertitur in juratam*" is fully confirmed by the document commonly known as the *Statutum* or *Statuta Walliæ.* Whether rightly entitled a Statute or not, it is of the highest possible authority. Its date is fixed with precision (12 Edward I.); it is enrolled on contemporary rolls;[1] and it is a masterly exposition in a small compass of certain branches of the English law which were to be applied to Wales. In it the two kinds of actions—those to be decided *per assisam,* and those to be decided *per juratam*—are clearly distinguished, and the distinction is that pointed out in the foregoing pages. The assise was an action in which the claim of the plaintiff was expressed *per verba brevis,* and to decide the facts of which the jurors could be and were summoned by virtue of the original writ itself. The actions in which the facts had to be determined *per inquisitiones seu per juratas* were those in which the deforciant could not know the nature of the claim *per verba brevis.* In these "per unius "partis affirmationem et alterius negationem descendant "partes ad legalem inquisitionem, et per veredictum "Inquisitionis terminetur placitum."

The phrase could not have referred originally to a change in the functions of the jurors of the assise.

Most of the authors who have written on this subject since the old actions of assise fell into disuse have supposed (or have at least used language consistent with a supposition) that the words *assisa* and *jurata* in the phrase *assisa vertitur in juratam* refer not to the action but to the jurors or persons composing the *assisa*

[1] The Rolls have been collated for the text published in the Statutes of the Realm.

summoned by virtue of the original writ of assise. Enough has been said to show that this could not have been the original meaning of the words; and, if they ever had that meaning at all, it could only have been because the jurors of the *assisa*, in later times, became, for the sake of convenience, the jurors of the *jurata*. When and under what circumstances this happened it is not very easy to determine in the face of many apparently contradictory passages.

The forms in the *Registrum Brevium* indicate the substitution of a new jury in certain cases.

The only forms in the *Registrum Brevium*, published in 1531, which relate to this matter suggest the idea that when the question of fact for decision was out of point of assise, or when an *assisa* was to be turned into a *jurata*, the persons who were to compose the jury were not those summoned by virtue of the original writ of assise, but persons caused to come by a distinct process. In the very common case of a deed pleaded by the defendant or tenant and denied by the plaintiff, the issue was taken, by consent of the parties, out of point of assise, on the question whether the deed was or was not that of a certain person. This was commonly tried, as Bracton, Fleta, and Britton have it, by the assise taken after the manner of a jury together with the witnesses to the deed. It might be supposed from the words of these three writers that the witnesses to the deed with the recognitors originally summoned by virtue of the writ of assise were the persons who gave the verdict. But it is difficult to reconcile the forms in the Register with this supposition. One [1] is entitled in the margin "Venire facias testes, et præter illos xij." It recites that an assise of Novel Disseisin had been arraigned between certain parties, that *profert* of a deed had been made by the defendant, and that the deed had been denied by the plaintiff. The Sheriff was to cause to come the witnesses

[1] *Registrum Brevium Judicialium*, 6, b. There are other similar forms on fo. 7 b.

" et præter illos xij. tam milites quam alios liberos " et legales homines de visneto de L. quorum quilibet " habeat centum solidatas terrarum et tenementorum " vel redditus per annum ad minus, per quos rei veritas " melius sciri poterit." Both plaintiff and defendant, it is added, "posuerunt se in juratam illam et super " testes prædictos."

What is here contemplated is that the jurors summoned by virtue of an original writ of assise had been dismissed after issue had been joined upon the replication *Non est factum,* and that judicial process was issuing to bring in a new jury and the witnesses to the deed.

Foreign issue in action of assise always triable by new jury at *Nisi prius.*

It is, no doubt, possible that when the Register was published some obsolete forms may have been printed with those in actual use, but it is certain that this particular form was in accordance with the practice at the period of the reports in the present volume, at any rate when the deed had been executed in a county other than that in which the assise was arraigned.[1] Among the Assise Rolls[2] occurs a case (Mordaunt v. Lister *et ux.*) in which the plaintiff's "*scriptum,*" alleged to have been executed in Essex, was pleaded in bar of an assise of Novel Disseisin arraigned in Bedfordshire. His replication was *Non est factum.* "Et de hoc ponit se " super *patriam* et super Johannem de Burlee" and four others *nominatim,* "testes in prædicto scripto " nominatos." The word *patriam* shows that a new jury was to be called, as, at this period, the form is invariably "ponit se super *assisam*" when the issue remains in point of assise and in the same county. Issue having been joined on a point triable in a foreign county, the Justices of Assise gave the parties a day *in Banc,* and

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[1] In the Act 12 Ed. II., St. 1., c. 2, it is said that the witnesses are to be joined not with the "Assise," but with the Inquest," which is the equivalent of *jurata.* But see note below, p. lxxii.

[2] *Assise Roll* (Bedfordshire), 9–17, Edward III., m. 4, d.

sent the record and the deed thither. Then would follow the *Venire facias*, in the ordinary course, out of the Common Pleas for the issue to be tried in the county of Essex at *Nisi prius*.[1] Indeed, after the Statute of Westminster the Second[2] the phrase "assise tourne en juree" sometimes appears in the form "assise tourne en en-" queste al *Nisi prius*."

But the original writ of assise continued to be the groundwork of the action.

When an issue extraneous to the points of the writ had to be decided, it was tried precisely as it would have been if the action had been commenced by a writ other than a writ of assise; but there was this anomaly, that the writ of assise still remained the groundwork of the the action. The plaintiff had correctly chosen the writ adapted to his case, and yet by an inevitable necessity the case went outside the points of the writ. Even in the case in which a deed was in question, and in which it is clear from the Register that a new jury was summoned, it is clear also that the action continued to be grounded on the disseisin, and that no new original writ issued, though there was a new jury-process to summon the jurors, together with the witnesses.

"Inquiry "over" after verdict out of point of assise: contradictory decisions: changes in practice.

This doctrine and this practice caused the so-called *festinum remedium* of the petty assise to be one of the most difficult branches of the old learning. The cases already cited have been chosen for their simplicity as illustrating matters in point of assise and matters out of point of assise, and the manner in which matters of either kind were determined. Some of the decisions to be found in the Year-Books are at variance with others,

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[1] *See* Brooke's *Abridgment*, *Assise* 233, and *Nisi prius* 22 and *see* 22 *Li. Ass.* 11, and 26 *Li. Ass.* 3. "Note that in assise the foreign "issues are always to be tried at "*Nisi prius*." On the other hand whenever assise of Novel Disseisin or Mort d'Ancestor was taken in the nature of assise, it had to be taken *in proprio comitatu* in accordance with *Magna Charta*, 9 Hen. III., c. 12. *See* Fitzherbert, *Abr. Assise*, 28.

[2] 13 Ed. I., c. 30.

and frequent references are made to changes of practice. To take once more, as a familiar example, the case of the plaintiff's deed pleaded in bar and denied—were or were not all the questions of fact (except the amount of damages) settled by a verdict for the plaintiff on that simple issue? The answer is—at one time they were not so settled, at another they were, and a change was being effected in the reign of Edward II. There was then a case in which there was a finding for the plaintiff in respect of a deed denied:—

"Bo[UR]NE. No one will hold that in this case inquiry "ought to be made over, concerning the disseisin, by the "assise, because, although this used to be the law, it is "not so now, and the Justices of the Bench at West-"minster will not inquire over of the disseisin, and, if "we do otherwise than as they do, it will not be be-"coming. But some people think that in such a case, "when the assise is changed into the nature of an "inquest, through the issue joined by the parties, the "others who are named in the writ are without day. "And after consideration of that point they gave them "a day at Westminster, on which day *Bo[ur]ne* ad-"judged that he should recover seisin, and that without "inquiring over of the disseisin, &c."[1]

On the other hand, there were as early as the reign of Henry III. some instances in which there was obviously

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[1] Translated from Fitzherbert's *Abridgment*, Tit. *Assise*, No. 408 (Hil. 19 Edw. 2). There is a similar case in the volume of *Year-Books* 11 and 12 Edward III., pp. 606–609, in which the change as to the practice of inquiring over is mentioned. It is worthy of remark also as showing how that which was out of point of assise was still tried after the manner of a *jurata*, though it may also show that the persons comprising a *jurata* and an *assisa* might by special direction be the same. There were several defendants, one only of whom pleaded a deed in bar. It was adjudged that a "jure" should try the matter out of point of assise, but that the persons of whom it was composed should constitute the "assise" to try the seisin and disseisin as affecting the other defendants.

no need for inquiry over, but judgment was given upon a verdict out of point of assise, as in the case of Darrein presentment already cited.[1] The rules according to which there should or should not be inquiry over became more fixed by degrees, and occupy a considerable space in some of the older Abridgments, and in such works as Booth's *Nature and Practice of Real Actions.*

Assise at large and Assise upon the title.

The subject is, however, still further complicated by other distinctions besides that of being in point of assise or out of point of assise. Had the judges always ruled simply that an issue was in point of assise or out of point of assise, and had a simple verdict been taken accordingly upon a simple issue, the remedy of an assise of Novel Disseisin would have better deserved the epithet "*festinum*" which Bracton applied to it. Sometimes, however, the assise was taken "at large," and sometimes "upon the title." In case No. 12 in Easter Term, in the present volume, it will be seen that an assise "upon the title" was distinctly regarded as being "out of point of assise." Later writers,[2] however, have placed "assise upon the title" and "assise "out of point of assise" in two distinct classes. Even the words "at large," too, have been used in more senses than one.

Meaning of "Assise "at "large."

The best explanation of the different significations of "taking the assise at large" is perhaps given by Booth[3]:—

"To take the assise at large is to take a special ver-
"dict of the recognitors of the assise, finding not only
"the seisin but the special manner of the entry, and so
"leaving it to the judgment of the Court whether there
"be any disseisin or not. But this is common with
"other actions. But to take assise at large peculiar to
"assise is:—

[1] See above, pp. li–liii.

[2] Booth and others who have followed him.

[3] Booth's *Nature and Practice of Real Actions*, pp. 213–214.

"(1.) Where the recognitors are bound to find and "inquire after other matters besides the seisin and dis-"seisin, as where an infant brings an assise and the "feoffment of his ancestor is pleaded against him, the "assise then shall be taken at large, *i.e.*, to inquire not "only of the points of the assise, but whether the "ancestor were of age, of good memory, out of prison "when he made the deed pleaded.

"(2.) Secondly, another sense of taking the assise at "large is when the recognitors shall only inquire of the "seisin and disseisin and damages, and not of the plain-"tiff's title, as when the tenant makes default."

Meaning of "Assise "upon the "title."

These remarks show that "taking the assise at large" was an ambiguous expression, like many others which relate to proceedings in assise. Booth's account of "taking the assise upon the title" is also, perhaps, worth quoting, though it is not very lucidly worded, and though his phrase "title at large" may be open to misinterpretation:—

"As to *veigne le assise sur le title*, &c., this is a plea "for the tenant when the plaintiff hath made a title at "large, without answering to the bar pleaded before by "the tenant, as in some cases he may, then the tenant "may pray that the assise may be taken upon the title, "*i.e.*, that the recognitors may inquire of all matters and "circumstances concerning the title; but if the plaintiff "traverse the bar and they are at issue, nothing can be "inquired but the bar which is traversed, and not the "title to be inquired after, for the title in such case is "but to induce the traverse of the bar. 5 H. 7. 29 b. "*Vide* there, where the tenant may plead *veniat assisa* "*super titulum*, and where not. . . . For example, if "the tenant plead that his father was seised, and died "seised and he entered and gives colour to the plaintiff, if "the plaintiff reply that the father of the tenant enfeoffed "him, and traverse the dying seised, upon which they "are at issue, the dying seised shall only be inquired,

" and not the plaintiff's title, *i.e.*, the feoffment; but if
" the plaintiff make a title at large, and say that after
" the descent his father entered by a stranger and died
" seised, and he entered, then the tenant may plead
" *veniat assisa*, &c. . . . So that, in short, when the
" plaintiff does not traverse, but confess and avoid the
" bar, by making a title to himself, the tenant may say
" *veniat assisa super titulum.*"

The expression "title at large" is probably used here only in antithesis to the particular bar pleaded by the tenant, which the plaintiff intends to avoid. An assise upon the title seems to have meant an assise upon some particular title, and not an assise in which the jurors were to inquire whether the plaintiff had any title at all. It appears to have been, sometimes at any rate, held that if the tenant pleaded in bar, and the plaintiff made a title which the tenant did not answer or traverse, the assise was to be awarded at large, and not upon the title which was not put in issue, and that if any other title were found for the plaintiff he should recover.[1] The only reasonable inference from this is, that when there was an assise upon the title, the inquiry extended not to the question whether the party had *any* title, but only to the question whether he had a particular title upon which issue was joined.

Whether "Assise upon the title" was "out of point of assise."

It is not difficult to see how in later times an assise upon the title may have come to be regarded as something different from an assise out of point of assise. It might naturally have been thought that, as the points of the writ were held to include the question whether the plaintiff had been seised so that he could be disseised, they must necessarily include any questions of title which might be pertinent to the inquiry. On the other hand the earlier lawyers recognised a clear dis-

[1] 28 *Liber Assisarum*, 17.

tinction between an issue on the general question of disseisin or not, and an issue limited to something less. There was an intelligible difference between the general issue *nul tort, nul disseisin*, and an issue respecting a particular feoffment; and they seem to have considered that an issue on some particular fact was out of point of assise.

The jurors of the assise gave a verdict in "assise "upon the "title" in the reign of Edward III.

The change of views with regard to the assise upon the title may, perhaps, have been caused by a change of practice in the use made of the jurors summoned by virtue of the writ of assise. The practice of summoning new juries to decide new issues appears to have been gradually restricted, and the jurors of assise appear to have decided, in later times, questions of fact which would have been referred to another jury in the reigns of John and Henry III. Thus even in the reign of Edward III. the assise-men sometimes, at any rate, decided an issue "out of point of assise upon the title." This is clear not only from the reports of the twelfth case in Easter term, but also from the corresponding record. As the several points relating to the title are stated, the parties do not, as in the case of a foreign issue, "ponunt se super pa-"triam," but they "ponunt se super assisam," and they "parati sunt verificare per assisam." With respect to one parcel of the tenements the assise was taken at large, but with respect to another parcel "upon the title." The entry upon the roll [1] concludes thus :—

"Et sciendum quod recordum prædictum una cum "brevi originali et panello assisæ prædictæ remittitur "præfatis Willelmo de Shareshulle et sociis suis Jus-"ticiariis &c.[2] ad capiendam inde assisam in patria "&c."

It is clear from this that there was no jury-process for a new jury to try the issue at *Nisi prius*, as in the

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[1] *Placita de Banco*, Easter, 13 Edward III., R°. 60.

[2] *i.e.*, Justices of Assise.

case of a deed alleged by a tenant to have been executed in a foreign county and denied by a plaintiff. On the contrary, the points of law having been decided *in Banc* the whole matter was sent back to the Justices of Assise, to take the verdict of the jurors of the assise,[1] "in proprio comitatu." Without the light thrown upon the matter by the record there might have been some doubt whether this was what really happened, because the words "et "sic ad patriam" occur in the report, and they might have been interpreted to indicate a new jury. They are, however, satisfactorily explained by the roll, which shows that they refer to the trial of the issue *in pais.*

Principles governing "Inquiry over."

In this case there are some references to the subject of "inquiry over," in relation to which the mode of taking the assise had its importance. In the earliest times apparently, when an issue out of point of assise had been decided by a new jury, the jurors of the original assise were sometimes resummoned to give a verdict on the points of the writ. But, as has already been shown, the verdict of the new jury out of point of assise was sometimes sufficient to decide the whole question. In like manner, a verdict given out of point of assise by the jurors of the original assise might decide the whole question of fact or not. In an assise of Novel Disseisin there was usually "inquiry over" in respect of damages when the verdict was in favour of the plaintiff. "In-"quiry over" in respect of the seisin and disseisin, however, seems to have depended, in the main, on an intelligible and reasonable principle. If the effect of the

[1] There are also instances, on the rolls of this period, in which the parties put themselves "super assi-"sam" on a traverse of the defendant's bar, and the judgment given was "capiatur jurata loco assisæ." The "jurata loco assisæ" being respited for want of jurors, the sheriff was to add "tales" (usually six). The jury might then, as it seems, consist partly of the original assise-men and partly of others, brought in (without view) solely to try the new issue.

pleadings, through which the parties arrived at an issue out of point of assise, was to admit either expressly or by implication the seisin, or the ouster, or both, there was no need to inquire over of that which was held to have been admitted. On the other hand, when there was no such admission it was necessary to inquire over of the seisin or disseisin or both.

Effect of development of trial by jury upon proceedings in assise.

It is most probable that in course of time, and as the system of trial by jury was developed, all questions of fact in proceedings by assise were put to the jurors summoned by virtue of the original writ of assise, except "foreign issues." A change of venue must, however, still have had the effect of converting an *assisa* into a *jurata* in the same manner as before, because no assise of Novel Disseisin could be taken otherwise than "in "proprio comitatu."

The foregoing remarks may, perhaps, be of some little assistance in rendering intelligible the reports of proceedings in assise which are of frequent occurrence in the Year-Books, and at the same time may serve as a small contribution to the history of trial by jury. They are at least founded on documents which are of unimpeachable authority and which appear to have been hitherto neglected.

Doctrine of Attaint.

Proceedings in assise have been rendered more obscure than they otherwise would have been by the doctrine of Attaint, the origin of which is not precisely known, and the application of which appears to have undergone various changes. There is no trace of it in Glanville's treatise, though he mentions the punishment for perjury applicable to the Grand Assise,[1] and it probably came in when a distinction was drawn between the jurors of an *assisa* and the jurors of any other kind of *jurata*—

[1] Glanville, Lib. II., c. 19.

between the summons of an assise and jury-process. Much stress is laid by Bracton, Fleta, and Britton upon the difference between a verdict given definitely upon the points of the writ (as seisin and disseisin in an assise of Novel Disseisin) as of the jurors' own knowledge, and a verdict given to the best of the jurors' belief, whether as a verdict at large by the jury of the assise, or as a verdict by any other jury. The subject, however, seems to be of less importance than has been attributed to it by some writers in their anxiety to prove that the recognitors of an assise did not constitute a jury. The Attaint was in all probability a creation of Bracton's time, and the limitations of it which he describes were modified soon after his death. It is not difficult to understand that jurors who came "*parati recognoscere*," after having had the view of the tenements, and every opportunity of informing themselves concerning the facts, might reasonably be subjected to penalties not inflicted on a jury called in to speak, according to repute in the neighbourhood, upon some question arising in the course of the pleadings. Nor is it difficult to understand that as the class of actions commenced by *Præcipe quod reddat* increased, and as the view was demanded in some of them, the differences of function between the two kinds of juries ceased to be of practical importance. Thus the Attaint became applicable to other actions besides assises.[1]

Distinction between jurors who spoke from their own knowledge and those who did not.

Long after the range of the Attaint had been thus extended, however, the distinction between jurors who spoke from their own knowledge and those who did not so speak was maintained, and the general principle was recognised that punishment should be inflicted upon the one class but not on the other. The interpretation of this principle varied with the different points of view of

[1] 3 Ed. I. (Westm. 1), c. 38; 1 Ed. 3, St. 1, c. 6.

different judges,[1] but not apparently the principle itself. It has indeed survived to the present time through the lapse of ages during which the functions of the juries of old have been divided between juries in the modern sense and witnesses. The witnesses are, it is true, not subject to attaint, but are still punishable for perjury, though not the jury.

Challenge of Array and of Polls.

Apart from all questions relating to the technicalities of proceedings in assise there are matters in these reports which still further illustrate the history of trial by jury.

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[1] For instance, in the common case of issue joined upon a plaintiff's replication of *non est factum*, and trial of the fact by twelve jurors together with the witnesses to the deed, it seems to have been commonly held that the Attaint did not lie against the jurors (even after its application had been extended by 3 Ed. I., c. 3), because they gave their verdict not entirely upon what was within their own knowledge, but upon what they heard from the witnesses. (Fitz. *Attaint*, 50). The witnesses to the deed also were not liable to Attaint because the form of their oath was not to speak of what was within their own knowledge but simply to speak the truth. (Fitz. *Attaint*, 53, and Year-Books 11 and 12 Edward III., pp. 338–340). But in the case *Challenge*, 132 in Fitzherbert's *Abridgment* (23 *Lib. Ass.* 11) it is stated that if the jurors of an assise are associated with the witnesses to the deed, and give a false verdict, an Attaint lies when their verdict is against the deed though not when in favour of it. The reason assigned is that the supposed witnesses, not having been present at the execution of the deed, have testified to matters which they have not themselves seen or heard. This case, however, is in many respects at variance with what is found elsewhere. The jurors of the original assise seem to have been in this instance associated with the witnesses, and this could never happen when the deed had been executed in a foreign county. It is difficult to see how the finding of the jurors could be more justly the subject of Attaint when the finding was against the deed than when for it. In either case they must practically have relied upon the statements of the witnesses. The judge, may, however, have considered that, although the witnesses were not sworn to speak from their own knowledge, reliance was placed upon them as speaking of that which they had seen and heard, and if either they or the jurors associated with them took the responsibility of giving a definite verdict, when they were obviously incapable of speaking with certainty, they must take the consequences. It is, however, by no means clear that this opinion was generally accepted as law.

In report No. 13 of Michaelmas Term in the twelfth year the distinction is drawn between the challenge of the Array and the challenge of the Polls. The Array was challenged because there was a reason alleged for doubting the impartiality of the Undersheriff. The reason is not stated in the *Liber Assisarum* in precisely the same manner as in the Year-Books. The challenge, however, failed because the Array had not been made by the Sheriff or any of his officers, but by the bailiff of a liberty. Then followed a challenge of the Polls, which was allowed because the jurors had indicted one of the parties for a felony.

Special qualifications required in jurors when Peers were parties.

In the first case in Trinity Term [1] in the thirteenth year there is a question concerning the qualifications of jurors having to try a civil cause in which Peers are parties. It was stated by counsel that "chivalers et les "mieux vaillants serront sur lenquest"; and it was held that the absence of knights was a good ground of challenge.

Jurors under the suspicion of the Court.

In the same case too it appears that juries were sometimes suspected of partiality by the Court, for various reasons, before they had given a verdict. Thus, if jurors, other than jurors of an assise, came on the first day [2] from a distant part of the county, there was considered to be a reason for examining them as to whether they had been "procurez de venir," or not. The reason of this probably was that, as the parties might cast an essoin up to the fourth day after that on which the writ was returnable, the services of the jurors could not be required before. So also if jurors showed too great a readiness to be upon the jury at any stage of the proceedings their conduct was regarded as suspicious.

[1] Below, p. 290. The words of the judges are remarkable also as confirming the interpretation given in this Introduction to the words *assisa* and *jurata*:—"le chalenge "est usuel, soit ceo en assise, soit "ceo en enqueste." The challenge is usual not *of* the assise or inquest (*jurata*) but *in* or *upon* it—that is to say in actions in which there is a trial of fact by assise or inquest.

[2] See below, p. 286.

Those who, having once come, in response to a *Venire facias*,[1] on a subsequent occasion remained in a town in which a cause was being tried, and which was remote from their homes, for a period of six weeks, when they were only at "small issues," (levied for non-appearance), were under such suspicion that the Court would not put the questions of fact to them. The packing of juries was, indeed, a very common practice in the reign of Edward III.[2]

Pleadings: *ostensio, demonstratio*, and *declaratio*.

It will be observed that in translating the record of the *Quare impedit* (No. 17) in Michaelmas Term in the twelfth year I have treated *ostensio, demonstratio*, and *declaratio* as quasi-technical terms for which I have not ventured to suggest any English equivalent. The action being one of those in which *utraque pars actrix esse potest*, the original defendant, Anthony de Lucy, is, upon the statement of his claim to the advowson, regarded as plaintiff, equally with the original plaintiff, Hugh de Courtenay, Earl of Devon. This doctrine is expressly mentioned in the record,[3] and appears to be the explanation of an obscure passage in the corresponding part of the report,[4] in which the defendant's counsel is represented as stating a matter at first to the Court, but at last against the party. The words have therefore to be regarded not as part of a plea in defence, but in relation to the claim of a party who was considered an *actor* or plaintiff. Even in this point of view, however, they present some difficulty.

Resemblances between terms in the Roman

Demonstratio was a technical term, during a certain period, in Roman law, and, during a certain period, in English law. The Roman *demonstratio*[5] was (until

[1] See below, p. 298.

[2] See 1 *History of Crime in England*, 280–281, 479.

[3] Below, p. 43.

[4] Below, p. 30.

[5] Gaii *Inst.*, IV., 40; and see Ortolan, *Explication historique des Instituts de L'empereur Justinien* (*Septième édition*), vol. 1, pp. 204–209, 524–526, and vol. 3, pp. 524–594. See also the *Institutes of Justinian*, IV., 6.

proceedings by *Formula* were abolished by the Emperor Constantius II.) that part of the *Formula* in which the subject matter of the action was stated. In English Courts also the *demonstratio*[1] was the part of the *Count* or *Declaration* in which the subject matter of the action was stated, and the names of the parties were mentioned. The first two ideas, therefore, which suggest themselves when the word occurs in relation to the pleadings, are, on the one hand, the Roman *Formula* as divided into *Demonstratio, Intentio, Adjudicatio,* and *Condemnatio,* and, on the other hand, the English Count or Declaration as divided into *Demonstratio, Declaratio,* and *Conclusio.* The use of the two words *demonstratio* and *declaratio* in the record seems, indeed, at first sight to confirm the supposition that *demonstratio* is used technically as the first part of the declaration corresponding to the same word in the Roman *Formula* of the time of Gaius, and that *declaratio* is also used as a technical term to express that part of the count or declaration which corresponded with the *intentio* of the Roman *Formula.* It is a very remarkable fact, too, that according to Gaius[2] "intentio "est ea pars formulæ qua actor desiderium suum *con-* "*cludit,*" while Bracton and Fleta constantly employ the word *intentio* to express the same or nearly the same meaning. It is thus possible to represent the *demonstratio* in English law as the equivalent of the Roman *demonstratio,* and the *declaratio* and *conclusio* together as the equivalent of the Roman *intentio.*

Formula, and terms applied to parts of the count in England.

A careful examination of the facts, however, will show that, in relation to the record now under consideration at least, these resemblances are delusive. The word *demonstratio* is there[3] used as the equivalent of *ostensio* or *ostensio juris,* which goes far beyond the *demonstratio*

These resemblances are delusive.

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[1] This will be found in most of the old books on pleading, and in the *Termes de la Ley,* Tit. "*Declaration.*"

[2] Gaii *Inst.* Lib. IV., c. 41.

[3] Below, pp. 47, 49.

regarded as a part of the Roman *Formula*, or as a part of the English count or declaration, and it is very doubtful whether the word *declaratio* is there used as a technical term at all.

The use of the word *intentio* by Gaius, Justinian, Bracton, and Fleta.

The division of the count or declaration into three parts technically defined as *demonstratio*, *declaratio*, and *conclusio*, was almost certainly unknown at the time of the compilation of the treatises bearing the names of Bracton, Fleta, and Britton. Bracton and Fleta commonly use the word *intentio* in a sense analogous to that in which it is used in the Roman *Formula*, because they were under the influence of the Roman law which they had studied when they introduced it into their works.[1] They both employ it, however, if not in two different senses, at any rate in relation to two wholly different parts of the proceedings. They apply it not only to the pleadings, but also to the writ. Thus Bracton says,[2] "Breve quidem, cum sit formatum ad "similitudinem regulæ juris, quia breviter et paucis "verbis *intentionem* proferentis exponit et explanat, "sicut regula juris, rem quæ est breviter *enarrat*. "Non tamen ita breve esse debet quin rationem et "vim intentionis contineat." There is an almost identical passage in Fleta.

But the original writ was a short statement of claim, and as a variance between it and the count was fatal, it is not difficult to explain the existence of the words *intentio* and *enarrat* in relation to the writ.

As, however, the word *intentio* was not restricted to the pleadings, it was obviously not a technical term expressing the count or declaration or a part of the count or declaration and nothing else. It was in fact used in a manner naturally suggested by the *Institutes*

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[1] Güterbock (*Henricus de Bracton und sein Verhältniss zum römischen Rechte*) does not appear to have bestowed much attention upon Bracton's use of the word *intentio*.

[2] Bracton, 413 b.

of Justinian. The technicalities of the *Formula* had been abolished before his time, but some references are nevertheless made in his works to the old mode of procedure. Thus we find "Si quis agens in *intentione* sua "plus complexus fuerit quam ad eum pertinet, causa "cadebat,"[1] of which the meaning seems to be "in for-"mer times, in the proceeding by *Formula*, if any plaintiff "included more in his *intentio* than he could justly claim, "his case fell to the ground." But the correlative passage is in the present tense: "Si minus in *intentione* com-"plexus fuerit actor quam ad eum pertineret . . . "sine periculo agit,"[2] "if the plaintiff has included less "in his *intentio* he runs no risk." In these instances the use of the word *intentio* can hardly be otherwise than in a technical sense. There appears, however, to be a reminiscence, as it were, of the old *Formula* in a passage relating to the new procedure in which the *intentio* is suggested, though there is no technical use of the word: —"Namque agit unusquisque aut cum eo qui ei obli-"gatus est vel ex contractu vel ex maleficio, quo casu "proditæ actiones in personam sunt, per quas *intendit*[3] "adversarium ei dare aut dare facere oportere, et "aliis quibusdam modis: aut cum eo agit qui nullo "jure ei obligatus est, movet tamen alicui de aliqua "re controversiam."

There is no indication that the authors of the treatises known by the names of Bracton and Fleta were directly acquainted with the *Institutes* of Gaius (which were rediscovered in the present century), and their knowledge of Roman law was probably derived either directly or indirectly from the works of Justinian. Their use of the word *intentio* is thus easily explained; it was, as in

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[1] Justin., *Instit.* Lib. IV., Tit. 6, § 33.

[2] Justin., *Instit.* Lib. IV., Tit. 6, § 34.

[3] See Mr. Moyle's note on this passage in his *Institutes of Justinian* (Clarendon Press, 1883), Lib. IV., Tit. 6, § 1.

Justinian's *Institutes*, both technical and non-technical. It was used technically to express the statement of the plaintiff's claim, whether shortly set forth in the writ, or shown more in detail in the *narratio*, count, or declaration; but it was used non-technically so far as any distinction between the writ and the pleadings was concerned.

Want of precision in the use of technical terms for the pleadings, by Bracton and Fleta.

There is, indeed, considerable difficulty in ascertaining with precision what (if any) were the technical terms for the successive pleadings at the end of the reign of Henry III., and at the beginning of the reign of Edward I.; and it may reasonably be doubted whether the period at which they became definitely fixed was not very much later. One short passage in Bracton, which is repeated in nearly the same words in Fleta, appears to be a very apt illustration both of these remarks and of the record which has suggested them:—

"Post essonia et dilationes, vel ad primum diem
" summonitionis per breve de recto, in judicio compa-
" rentibus tam petente quam tenente, petens *actionem*
" qua agere velit et *intentionem* suam proponere
" debet coram Justiciariis, ut, per hoc, speciem futuræ
" litis *demonstret*. Et, audito brevi de recto, secun-
" dum quod fuerit clausum vel apertum, dicat sic
" petens vel ejus advocatus in præsentia Justiciario-
" rum pro tribunali residentium:—'Hoc *ostendit* vobis
" 'A. quod B. injuste ei deforciat tantum terræ cum
" 'pertinentiis in tali villa, et ideo injuste quia qui-
" 'dam antecessor suus nomine C. fuit inde vestitus et
" 'seisitus in dominico suo ut de feodo et in jure in
" 'tempore,'"[1] &c. (tracing the descent and the right).

The words *intentionem, demonstret,* and *ostendit*, are here used in such a manner as to show that neither Bracton nor Fleta could have recognised any such technical dis-

[1] Bracton, 372 b. Fleta, Lib. VI., c. 16.

tinction between *demonstratio* (or *ostensio*) and *intentio* as existed in the Roman *Formula*. Nor is any such distinction to be found in the passages in which Bracton sets forth the manner of stating a claim in actions upon writs other than a writ of Right. As soon as the writ had been read in Court the plaintiff or demandant was to *proponere intentionem*.[1] This act was, no doubt, in the nature of making a count or declaration, but did not always amount technically to a count or declaration.

Their use of the words *intentio* and *narratio* compared with the use of the word *narratio* in the "*Novæ Narrationes*."

In a work on pleading, which is probably of a date as early as the Year-Books published in the present volume, or still earlier, it is clearly stated that there was no count, declaration, or *narratio*, as distinguished from the mention of the facts in the writ, when the proceedings were by assise, either of Novel Disseisin or of Mort d'Ancestor:—"Nota quod in assisa Novæ Disseisinæ, "nulla fiet narratio sed tantum querela . . . In "assisa Mortis Antecessoris querens petat quod puncta "brevis sui inquirantur, et nulla fiat alia narratio. "Quodlibet istorum brevium in se ipso continet "narrationem."[2] It is, nevertheless, expressly stated by Bracton that the plaintiff had to *proponere intentionem* after the writ had been read in the assise of Mort d'Ancestor.[3] The chapter in Fleta, too, *De Intentione Querentis*[4] includes the *intentio* in proceedings by assise. Either of two inferences might be drawn from these apparently contradictory facts—(1) that there had been a radical change of practice involving the suppression of a count or declaration in Novel Disseisin and Mort d'Ancestor between the time of Fleta and the compilation of the *Articuli*—(2) that the words *proponere intentionem* did not necessarily imply anything beyond

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[1] See Bracton, 240, 255 b., 281 b., 296 b., and 313 b.

[2] *Articuli ad Novas Narrationes* (printed with the *Novæ Narrationes*, 1561, Tottell), p. 90.

[3] Bracton, 255 b.

[4] Fleta, Lib. IV., c. 7.

a restatement of what was asserted in the writ in cases of assise of Mort d'Ancestor, and of what was asserted in the plaint and writ in cases of assise of Novel Disseisin.

The second alternative appears consistent with all the passages, both in Bracton and Fleta, which may thus be brought into perfect harmony with the *Articuli*. Thus Bracton says in relation to the assise of Mort d'Ancestor, "Proposita autem *intentione* petentis, oportet "eum fundare et probare, scilicet per assisam in "modum assisæ, omnes brevis articulos,"[1] which may be translated, "After the *intentio* of the plaintiff has "been stated he has to lay all the points of the writ "and prove them by the verdict of the assise taken in "manner of assise." The expression *fundare intentionem* was commonly used in relation to the assises of Novel Disseisin and Mort d'Ancestor, and to the writ of Cosinage, which was closely allied to the latter. It seems to mean laying the ground of claim, but in the case of the assises the ground was sufficiently stated in the points of the writ, while in the case of the writ of Cosinage the relationship had to be traced in the count.

In some cases, however, it is clear that the *intentio* of Bracton is exactly equivalent to the *narratio* or count. Thus, he says[2] in relation to Dower, "Proponat mulier "per se vel per attornatum suum *intentionem* suam "in hunc modum, cum dotem petierit non nomi-"natam :—'Hoc vobis ostendit B.'" (stating the claim). This is the form in which the *narratio* or count invariably commenced, except that the language used was French. In the *Novæ Narrationes* the counts always begin with the words, "*Ceo vous moustre,*" which can, beyond all doubt, be identified with "*Hoc vobis osten-*"*dit,*" and in this identification is probably to be found

[1] Bracton, 261 b.

[2] Bracton, 296 b.

the explanation of the words *ostensio* and *demonstratio* in the record of the *Quare impedit.* Not only is *ostensio* equivalent to *demonstratio,* but *moustre* is equivalent to *ostendit,* and when they relate to the count at all they relate not to any particular part of it, but to the whole.

Use of the words *counte, demoustraunce,* and *entente,* by Britton.

In Britton, as in Bracton and Fleta, there is a want of precision in the use of the terms which express the count or declaration. Thus, in relation to the writ of Cosinage, it is said,[1] "En cest bref ne fet nient a fere "mencioun de dreit en *counte countant,* ne en nul bref "de possessioun, ou nule mencioun ne est fete el "bref, car par variaunce del bref et de la *demou-* "*straunce* seroit le bref abatable." The words *counte* and *demoustraunce* are evidently used here to express the same meaning. In reference to this proceeding by writ of Cosinage, Bracton[2] says, "proponat petens *inten-* "*tionem* suam tali modo . . . . Et sic fundat "*intentionem.*" Thus *counte, demoustraunce,* and *intentio* all appear to convey the same idea. The word *intentio,* however, as it occurs in Bracton and Fleta, is often represented in Britton by the word *entente;* and just as we find in Bracton, in relation to a writ of Right, the words "*intentionem* suam proponere debet "ut per hoc speciem futuræ litis *demonstret,*" we find in Britton,[3] in relation to an assise of Darrein Presentment, the words "covendra al pleintif *moustrer* "*sa entente.*" So also in relation to the assise of Mort d'Ancestor it is said "die le pleintif sa *entente* solom "les pointz del bref original."[4]

In Fleta the identity of the *intentio* with the *narratio* is brought into prominence by the heading to a chapter[5] in which is introduced a passage already quoted and common to Fleta and Bracton.

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[1] Britton, Lib. III., c. 26, § 6.
[2] Bracton, 281, b.
[3] Britton, Lib. IV., c. 2.
[4] Britton, Lib. III., c. 10, § 12.
[5] Fleta, Lib. VI., c. 16.

Intentio disappears, and *narratio*, or *counte*, or *declaration* is used for the statement of claim.

Upon consideration of these facts it seems impossible to fix upon any word which (and which alone) can be considered the technical term expressing, in or before the reign of Edward I., the plaintiff's or demandant's statement of claim as distinguished from his writ. In the reign of Edward III., and, perhaps as early as the reign of Edward II., the word *intentio*, which had been borrowed from the Roman law, had dropped out of sight, and the word *narratio* must have been in very common use. The *Novæ Narrationes* must have formed, about this period, almost as essential a part of a lawyer's library as the reports themselves. The work is attributed by Reeves[1] (who, though probably acquainted with it only through a printed copy, has given very good reasons for his opinions) to the earlier part of the reign of Edward III. There is, too, a MS. copy of the *Novæ Narrationes* in Lincoln's Inn Library,[2] which must be at least as ancient as the MSS. of the Year-Books of the present volume, and may even be a little older. Though it gives in principle the same forms as those in the edition published by Tottell, it differs very considerably in some points of detail, and contains some curious additional matter.

Both in the MS. and in the work as printed the word *Narratio* is used to express the plaintiff's or demandant's statement of claim as considered apart from the writ. It is, of course, the Latin equivalent of the French *counte* or *conte*, and these two words seem to have eventually driven out all their competitors except the word *declaration*, which in process of time became the usual term in personal and mixed if not in real actions.

But *narratio* had not before

Though, however, the words *counte* or *narratio* may have been those most commonly used to convey the

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[1] Reeves's History of the English Law, Ed. Finlason, vol. 2, p. 439.

[2] No. XIX. (CXXXIX.).

meaning of a statement of claim in the reign of Edward III., both in legal treatises and for colloquial purposes in court, the *Quare impedit*, which has suggested these remarks (as well as other entries on the rolls) shows that *narratio* was not a technical word which must necessarily be used to express the idea of a statement of claim in the records.

the reign of Edward III. become a technical term of which the use was imperative.

It seems, too, that in the early part of the reign of Edward III. there was not any technical word universally used to signify the statement of defence. In the Year-Books in the present volume the defendant or tenant usually "*respond*" or "*dit*," something which may be in the nature of a plea (according to the restricted application of that word), unless he says something in the nature of a demurrer. Bracton and Fleta use the Roman word *exceptio*, to express the idea of a plea; and Britton also uses the word *excepcioun*. But on the other hand the word invariably employed in the *Novæ Narrationes* for the statement of defence is, in its different forms, *defens*, *defence*, or *defensio*. This also, like *narratio*, was sometimes used by the earlier law-writers.[1] But the only term expressing one of the pleadings which appears to have been definitely fixed was that for the reply to the statement of defence. This is the Roman word *replicatio* used by Bracton and Fleta, used also by Britton in the form *replicacioun*, used in the Year-Books, used in the *Novæ Narrationes*, and used, for many a generation afterwards, always in the same sense.

Different terms in use for statement of defence: *replicatio* uniformly used for the reply to it.

It is a remarkable fact that although Bracton, Fleta, and Britton frequently use the Roman words *Intentio*, *Exceptio*, and *Replicatio* (or the French equivalents) to express the first three stages in the pleadings, they use the word *triplicatio* (or *triplicacioun*) in approximately

Curious use of the word *triplicatio*.

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[1] Bracton, 327.
Fleta, Lib. V., c. 36.
Britton, Lib. V., c. 15, § 2. (Ed. Nichols, II., 304).

the same sense as the Roman *duplicatio*, to express the Rejoinder. They were either unaware that there had been such a term as *duplicatio* or they looked upon it as a synonym for *replicatio*. It is difficult to understand how this confusion could have arisen and affected all three writers, because no such mistake was made in France (where the words *réplique, duplique, triplique,* and *quadruplique*[1] were long preserved), because there was constant communication between England and France, and because French was the language of the courts in England. Be the reason, however, what it may, the fact is an additional illustration of the want of precision in the technical terms for the pleadings.

Difficulty of translating words loosely used, or used in a sense different from that which they subsequently acquired.

This uncertainty in the use of words, together with the frequent use of words which have in later times acquired a more fixed and definite signification, adds considerably to the difficulties of translation. In the record of the *Quare impedit* it appeared best to retain the words *ostensio, demonstratio,* and *declaratio,* which may be used technically, quasi-technically, or non-technically. But there are many passages in French which could not be treated in this way. Thus counsel sometimes "*plede*" something in answer to what would in later times at any rate have been called a plea, replication, or rejoinder. It would be hardly correct in such cases to translate the word "replied," "rejoined," or "surre-"joined," for the contemporary use of the word would then be put out of sight. Nor on the other hand is the translation "pleaded" altogether satisfactory, if regarded from a more modern point of view. That, however, has appeared to be the less of two evils, because it calls attention to the earlier use of the word "*pleder,*" because the word "pleadings" at any rate has always had a wider signification than that of plea, and because

[1] See Stephen *On Pleading,* lxxiv. (quoting the *Commentaries* of Terrien), and Loysel *Institutes Coutumières,* Glossary, Tit. *Réplique.*

it may be understood that the counsel pleaded by way of replication, rejoinder, &c. as the case might be.

The word *demorer* or *demurer* also presents difficulties to a translator, because the practice in the reign of Edward III. was different from that of later times, as the point of law seems to have been stated orally. It will be seen that counsel frequently raise the objection that a statement made by the opposite side does not in law require an answer from them. This from a more recent point of view would be called a demurrer. But it no less frequently happens that the reporter says "*et "puis il nosa pas demorer,*" which at first sight it seems most natural to translate "And afterwards he did "not dare to demur." The better rendering, however, appears to be "he did not dare to abide judgment." According to the etymology of the word, of course, there was no complete demurrer unless the demurrant did abide judgment on the point of law; but on the other hand there is no word to express the inchoate demurrer subsequently withdrawn except demurrer itself, and from a modern point of view it seems a contradiction in terms to say that one did not dare to demur whose pleading was, according to modern notions, of the nature of a demurrer.

The king at Antwerp: remarkable proceedings in relation to a fine.

There is a remarkable instance of the interference of the King in the ninth case in Easter Term. When he was at Antwerp, a writ of *Dedimus potestatem* issued by his direction to Geoffrey le Scrope (of whose position more is said below) to take the acknowledgment or concord of a fine of three manors in England—the whole of these proceedings being beyond sea. In the ordinary course a writ or (as the lands were in more counties than one) writs of Covenant should have preceded or at least been of not later date than the writ of *Dedimus potestatem*, and all these writs should have issued out of the Chancery which was in England. After the issue of the *Dedimus potestatem* the King under the seal called the

"Targe" (a seal commonly used when the King was abroad, and when probably the Great Seal was in England), directed the Chancellor then in England to make out in England a writ of Covenant of even date with the writ of *Dedimus potestatem.* The Chancellor rightly made out two writs of Covenant, instead of one, because the manors were in two counties, but the effect of this was to cause a grammatical difficulty in relation to the *Dedimus potestatem* in which the singular was used—*Cum breve nostrum de conventione pendeat* instead of *Cum brevia nostra de conventione pendeant.* This was alleged to be a variance, but the point does not seem to have been pressed because the cognisor could not plead in opposition to his own assent.

A far more serious objection was raised on the ground that the *Dedimus potestatem* had issued in an irregular manner, as it ought, according to common law, to have issued out of the Chancery, which was in England, but had in fact issued in some unprecedented manner at Antwerp, and was therefore "not of record." The answer to this (which appears to have been received as good law) was that "The King is of record in whatsoever "part of the world he may be"—a phrase which, as applied to this particular case, seems to mean that the King's writ is of record if it issue by his direction. Here, too, the argument was used that the cognisor could not plead in opposition to his own assent.

The chief argument against the legality of the fine, however, seems to have been founded on a strict interpretation of the doctrines applicable to the later stages of the proceedings upon a writ of Covenant considered as an action at law. The defendant in the writ of Covenant, or, in other words, the cognisor of the fine, proffered himself and prayed that the plaintiff might be called, and, as the plaintiff did not come, prayed judgment on the nonsuit. This seems to have caused some embarrassment and difference of opinion among the judges. There were several adjournments, and the plain-

tiff's or cognisee's attorney at length appeared—not to prosecute the writ of Covenant, but to receive one part of the chirograph. The King, however, sent a writ to the Justices of the Common Bench commanding them to have the note made and the fine engrossed; and upon this Stonore, Ch. J., acted, though he said also that the action had in fact been properly continued, and that an attorney for that purpose had been constituted before himself.

Chief Justice Scrope, being with the King abroad, said to retain his status though another was "*subrogatus*" in his place.

It appears from the record[1] of this case that an objection was raised which is not mentioned in the report. This was that Geoffrey le Scrope, who took the "*cognitio* "*terrarum*," or acknowledgment, at Antwerp, by virtue of the *Dedimus potestatem*, was, at the time of the taking, neither a Chief Justice nor a Justice of the Common Bench.

The words are "præfatum Galfridum Capitalem Jus- "ticiarium nostrum vel Justiciarium de dicto Banco "non existere;" and the meaning might be supposed to be that Scrope was neither Chief nor other Justice of the Common Pleas. This, however, was not what was intended, or at any rate not the sense in which the exception was met. The King sent a writ to the Justices of the Common Pleas expressing the royal intention and will that Scrope, having been Chief Justice, was to retain the "*status*" of Chief Justice during his absence from England, and until his return, "*alio in loco suo interim* "*subrogato*." The *status*, however, could not have been that of Chief Justice of the Common Pleas, to which office Stonore had been appointed on the 7th of July in the

[1] *Placita de Banco*, Easter, 13 Edward III., R°. 94. The record was found (during a search for another case) after the report (in which there was no clue of name or county) had been printed. The writ of covenant was brought by Thomas de Pabenham against John son of John de Pabenham in respect of the manors of Wyldene and Pabenham in the county of Bedford, and the manor of Emberton in the county of Buckingham.

ninth year of the reign,[1] in succession to Herle, whose resignation was accepted on the previous 3rd of July.[2]

There are entries on the Close and Patent Rolls which show that Geoffrey le Scrope, being Chief Justice of the King's Bench, was sent abroad on the King's business, and re-appointed Chief Justice several times. Among them is the following:—

"Rex dilecto et fideli suo Galfrido le Scrope Capi-
" tali Justiciario suo ad placita coram nobis tenenda
" assignato Salutem. Cum vos de mandato nostro ad
" partes transmarinas sitis in proximo profecturus, per
" quod volumus quod dilectus et fidelis noster Ricar-
" dus de Wylughby una cum aliis fidelibus nostris
" placita illa teneat dum vos in obsequium nostrum
" sic esse contigerit, vobis mandamus quod rotulos,
" recorda, processus, indictamenta, et omnia alia memo-
" randa dictum officium tangentia, quæ in custodia
" vestra existunt, præfato Ricardo per indenturam inde
" inter vos et ipsum modo debito conficiendam sine
" dilatione liberetis. Mandavimus enim præfato Ricardo
" quod rotulos, recorda, processus, indictamenta, et alia
" memoranda prædicta a vobis recipiat, et placita illa
" teneat, sicut prædictum est. Teste Rege apud Shene
" x. die Septembris. Per ipsum Regem.

" Et mandatum est præfato Ricardo quod rotulos,
" recorda, processus, indictamenta, et alia memoranda
" a præfato Galfrido recipiat, et placita illa teneat.
" Teste ut supra. Per ipsum Regem."[3]

The statement hardly in accordance with facts.

According to this instrument alone Willoughby might, perhaps, have been on this occasion regarded as only acting Chief Justice of the King's Bench during the absence of Scrope. There are, however, some other documents

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[1] *Patent Roll*, 9 Edward III., Part 2, m. 32.

[2] *Patent Roll*, 9 Edward III., Part 2, m. 31.

[3] *Close Roll*, 7 Edward III., part 1, m. 2.

which appear to refute this theory. It is clear that a few months after Scrope had made over the records of the Court of King's Bench to Willoughby, he had ceased to be styled Chief Justice in official documents, and his tenure of that office was mentioned as a thing of the past:—

"Rex omnibus ad quos &c. Salutem. Sciatis quod " nos, considerantes laudabilia obsequia quæ dilectus " et fidelis noster Galfridus le Scrope tam domino " Edwardo nuper Regi Angliæ patri nostro quam no- " bis impendit, et indefessos labores quos idem Galfri- " dus in nunciis nostris, tam in partibus transmarinis " quam *temporibus quibus ipse Capitalis Justiciarius* " *noster ad placita coram nobis tenenda assignatus* " *extitit,* sustinuit, volentesque ipsum eo prætextu " favore prosequi generoso, concessimus pro nobis et " heredibus nostris eidem Galfrido quod ad proficis- " cendum in nunciis nostris vel heredum nostrorum " ad dictas partes transmarinas seu alibi extra reg- " num nostrum contra voluntatem suam, in tota vita " ejusdem Galfridi exnunc, per nos vel heredes nos- " tros nullatenus compellatur seu oneretur, nisi con- " tingat nos iter nostrum extra dictum regnum nos- " trum pro negotiis nos tangentibus arripere, quem " tunc volumus, si commode hoc facere possit, nobis- " cum extra idem regnum proficisci. In cujus &c. " Teste Rege apud Notingeham xiiij. die Julii. Per " breve de privato sigillo."[1]

The words printed above in italics were not inserted by accident, and there is hardly any possibility of reconciling them with Scrope's retention of the *status* of Chief Justice. So completely, indeed, was his connexion with the Court of King's Bench supposed to be severed that he was actually appointed a Justice of the Court of

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[1] *Patent Roll*, 8 Edward III., part 1, m. 3.

Common Pleas, as the following enrolment, in juxtaposition on the roll with that last quoted, will show:—

"Rex omnibus ad quos &c. Salutem. Sciatis quod "loco dilecti et fidelis nostri Johannis de Stonore "unius Justiciariorum nostrorum de Banco, constitui-"mus dilectum et fidelem nostrum Galfridum le Scrope "Justiciarium nostrum de eodem Banco, ad placita "in eodem Banco una cum aliis fidelibus nostris "tenenda secundum legem et consuetudinem regni "nostri, quamdiu nobis placuerit, percipiendo in officio "illo feodum consuetum. In cujus &c. Teste Rege "apud Notingeham xvj. die Julii. Per ipsum Regem "et Concilium.

"Et mandatum est Justiciariis de Banco quod loco "prædicti Johannis ipsum Galfridum ad hoc admittant.[1] "Teste ut supra. Per ipsum Regem et Concilium."[2]

But, perhaps, a convenient and harmless fiction.

It seems, however, that Scrope was once again appointed Chief Justice of the King's Bench, as the Rolls of *Placita coram Rege*[3] show that he held that office during the first three terms of the year 1338 (12 Edward III.). The King left England for Antwerp (where the disputed *Dedimus potestatem* issued) on the 12th of July in that year, and Willoughby afterwards acted as Chief Justice. Willoughby's appointment on this occasion has not been found; but it is most probable that there was an instrument following the precedent of the 7th year of the reign printed above, and, if so, Scrope's "*status*" of Chief Justice[4] existed chiefly by virtue of the King's "intention" and "will" subsequently expressed in his

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[1] *amittant* in the Roll.

[2] *Patent Roll*, 8 Edward III., part 1, m. 3.

[3] Headings of Rolls of *Placita coram Rege*, Hilary, Easter, and Trinity, 12 Edward III. See also the *Close Roll*, 12 Edward III., Part I. m. 11.

[4] It is not expressly stated either in the Statute 18 Edward I. (*Modus levandi fines*), or in the Statute 15 Edward II., that the acknowledgment of a fine could be taken before the Chief or any Justice of the Court of King's Bench, but there seems to be no doubt that it could. See 1 Cruise, *Fines and Recoveries*, 54, and note (a.).

writs. This may have been a convenient fiction, for it is mentioned in the record of the case that acknowledgments had been taken in a similar manner in other instances; and there might have been serious inconvenience and injustice had all the fines been declared null. It is possible, indeed, that all the parties desired that there should be a good assurance by matter of record, and that all questions concerning irregularity should be settled. The King's interference is nevertheless worthy of notice, and will be further illustrated below.

Proceedings upon Petition of Right.

In the report of the *Quare impedit* in respect of the church of Brigham, No. 17 of Michaelmas term in the twelfth year, a Petition of Right is incidentally mentioned. A statement is made by Gayneford, as counsel, to the effect that Hugh de Courtenay had brought a previous *Quare impedit* against Thomas the son of William de Fortibus, that the hands of the Ordinary were tied at the time, and that Courtenay then sued by petition to the King. This is not part of the pleadings in No. 17 as entered upon the roll, and cannot, therefore, be corrected by the record of this particular case. There is, however, good reason to believe that it was not Thomas de Fortibus, but another Thomas, against whom the earlier *Quare impedit* was brought. In case No. 17 Courtenay is claiming the advowson of the church of Brigham partly by purchase, but partly as next heir to Isabel de Fortibus, who died without living issue; and as Thomas was probably her son by William de Fortibus, and, while living, her heir apparent, it is hardly to be supposed that he had been defendant in the previous action.

There is, however, a case among the *Placita coram Rege*[1] which agrees in the main with Gayneford's state-

[1] *Placita coram Rege*, Hilary, 5 Edw. 2, R°. 44. There is a very imperfect and altogether unsatisfactory abridgment of this case in the *Placitorum Abbreviatio*, p. 313.

ment, and in which one Thomas was defendant. Hugh de Courtenay brought his *Quare impedit* against Thomas de Hothwayt, in respect of the church of Brigham, and had judgment in his favour, and a writ to the Ordinary. Another *Quare impedit,* however, was brought by the King (Edward II.) against the same Thomas de Hothwayt in respect of the same church. The effect was that Courtenay's presentation could not be accepted by the Ordinary until the right had been tried, as between Courtenay and the King, and this is apparently what is meant by the expression "while the hands of the "Ordinary were tied." Thereupon Courtenay presents his petition (in French) praying that the King "will be "pleased to assign some of his Justices, such as he "shall please, to hear and to try according to law and "reason the right to this same advowson between our "said Lord the King and the aforesaid Hugh." The King consents, and appoints Roger Brabanzon (Ch. J., K.B.), Henry le Scrope (J., C.P.), and Henry Spigornel (J., K.B.), to hear and discuss (*discutiant*) the right to the advowson, in accordance with the terms of the petition.

The three Judges named in the commission are probably the "Justices at the Exchequer" mentioned in the report. According to the *Placita coram Rege* both John de Beverley (on the part of the King) and Hugh de Courtenay appeared before these Justices at Westminster. They, however, were unable to proceed without having before them the record and process of the action pending in the Court of Common Pleas between the King and Hothwayt.

Two writs then issued—one to the Chief Justice of the Court of Common Pleas, the other to Brabanzon, the first named of the three commissioners appointed to try the Petition of Right—the one to have the record and process of the King *v.* Hothwayt, and the other to have the Petition of Right ("*cum omnibus inde deductis*") *coram nobis ubicunque fuerimus in Anglia.* The

effect was to bring the whole matter into the Court of King's Bench, where judgment was given for the King (Edward II.) as having the right to present, because the lands and advowsons of which Isabel de Fortibus died seised had been taken into the hand of the King (Edward I.) and not sued out again by any heir of hers, and this was not denied by Courtenay.

This judgment by itself would hardly support Gayneford's statement that the Crown had presented in right of Hugh de Courtenay as heir to Isabel de Fortibus, for it is not shown anywhere in the record who was her heir. But, if the order of the sentences in the report is correct, there were ulterior proceedings before the commissioners appointed to try the Petition of Right—"the "Justices at the Exchequer"—who determined the right to be with Hugh though the King presented by reason of Hugh's nonage.

Relations of the King, the Council, the Parliament, and the Chancery.

There are many passages in this volume which illustrate the relations of the King, the Council, the Parliament, and the Chancery to the Court of Common Pleas and other courts. In the *Quare impedit*, No. 17, in Michaelmas Term, it seems that the Justices refused both to have certain pleadings entered upon the roll, and to seal a Bill of Exceptions according to the Statute of Westminster, the Second, c. 31. At the instance however, of the plaintiff (the Earl of Devon), the King's writ was sent to the Justices, requiring them either to have the pleadings entered or to seal a Bill of Exceptions, and the proceedings were thereupon enrolled.[1]

In this case it is not stated whether the writ issued after petition to the King, or to the King and Council, or to the King by Bill in Parliament,[2] or to the King in his Council in Parliament,[3] or to the Council alone. But there was at any rate an exercise of the prerogative

[1] See below, pp. 44 and 46.
[2] See below, p. 242.
[3] See below, p. 372 (note).

either directly or through some kind of delegation. It was first clearly pointed out by Sir Francis Palgrave (a worthy successor, as lawyer-historian and record-scholar, of such men as Hale and Selden) that all the proceedings of the courts below, *in all their stages*, were within the cognisance of the Council.[1] It may be added that, so far as the courts of Common Law are concerned, it is especially in the intermediate stages that the intervention of the King and Council comes into notice.

Remarkable instances of the King's intervention, and of Petitions to "the King "in his "Council, "in his "Parliament."

Short notices of opinions given by the Council will be found below at pages 298, 366, &c. Some very remarkable instances, however, of the King's intervention, and of petitions to the King in his Council in his Parliament occur in the sixtieth case in Trinity Term in the present volume.[2] It is very briefly reported, but a search among the records has revealed some facts in connexion with it which seem to be not unworthy of attention, and indicate, to say the least, considerable irregularity in the manner of recording proceedings before Justices of Assise.

Among the records known as "Assise Rolls"[3] in the Public Record Office there are no less than four different records or commencements of records in this case, in addition to the enrolment among the *Placita de Banco*[4] after the removal of the cause into the Common Bench. There are considerable differences in the different accounts of the same transactions, and, though some are immaterial, others are of great importance.

One John de Boddenho, chaplain, brought an assise of Novel Disseisin against one John de Derby, clerk, and

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[1] Palgrave, *Original Authority of the King's Council, passim*, and in particular pp. 18–19.

[2] Below, p. 370.

[3] *Assise Rolls*, Bedford, 9 Edw. III. $\left(\left.\begin{matrix}\text{M}\\1\\5\end{matrix}\right\}4\right)$, and 9–17 Edw. III. $\left(\left.\begin{matrix}\text{M}\\1\\5\end{matrix}\right\}5\right)$.

[4] *Placita de Banco*, Trinity, 13 Edw. III., R°. 351.

others, in respect of his freehold in Bedford and Biddenham, complaining that he had been disseised of two messuages, seventeen shops, three acres of land, and rent to the amount of six shillings. It was admitted on both sides that one of the messuages was the chapel of St. Thomas the Martyr, newly built or rebuilt on the bridge of Bedford, and that the rest of the freehold in demand was of the appurtenances of the chapel. Derby alleged that he held the chapel for life, "ex collatione "domini Regis." He produced the King's Letters Patent, which were dated the 31st of May, 6 Edward III., to that effect, and recited that the chapel was "vacantem et ad nostram donationem spectantem." He also produced a writ under the Privy Seal forbidding the Justices to proceed without consulting the King :—

"Edward par la grace de Dieu Roy Dengleterre, "Seignour Dirland, et Ducs Daquitaine, a noz chiers "et feaux Monsire Johan de Shardelowe et ces com-"paignons noz Justices assignetz, as assises prendre "en Countez de Bedeford assignez, Salutz. Come "nous eioms entendu que Johan de Bodenho, chape-"leyn, eit arranie une assise de Novele Disseisine "par nostre bref devant vous, des tenemenz appurte-"nauntz a la Chapelle sur le pount de Bedeford, vers "nostre chier clerk Johan de Derby, a qi nous avoms "done piecea la dite chapelle come de nostre dreyt "real, vous maundoms qe a la dite assise prendre "nailletz en nule manere avant saunz nous primere-"ment ent aviser. Done soutz nostre prive seal a "Cardoil le xiiij. jour de Juyl lan de nostre regne "noefime."

Upon this there was an adjournment, "et interim "loquendum fuit cum domino Rege."[1]

[1] This appears to be directly in opposition to the Statute 2 Ed. III., c. 8., by which it was enacted that Justices were to do right even though a commandment might come to them, under the Great Seal or Little Seal, to stay proceedings.

Afterwards the plaintiff (John de Boddenho) produced the King's writ close (dated the 18th of November, 9 Edward III.), reciting that Boddenho had presented a petition "coram nobis et Concilio nostro in Parliamento nostro," in which he had set forth his case as already stated, but with the addition that the Mayor and Bailiffs of Bedford "custodiam cujusdam capellæ "per ipsos de novo super pontem villæ prædictæ con-"structæ cum omnibus ad custodiam illam pertinen-"tibus præfato Johanni [de Boddenho] ad totam vitam "suam habendam contulissent." It is stated in this writ that the Justices had stayed proceedings in consequence of Derby's allegation as to holding the chapel "ex collatione[1] nostra," but no mention is made of the King's writ to them under his Privy Seal. They are, however, directed to proceed "ad captionem assisæ prædictæ."

The plaintiff thereupon prayed the assise. Derby appeared by his bailiff, one William de Abberbury, who alleged that, since the last-mentioned writ had been obtained, the King had seized the chapel into his hand "et postmodum illam contulit præfato Willelmo de "Abberbury tenendam ad totam vitam suam." Abberbury produced Letters Patent to that effect, dated the 13th of March, 10 Edward III. He referred also to the previous writ of Privy Seal (already quoted in French) to show that the King claimed the right of donation or collation, and said that the Justices ought therefore not to proceed "Rege inconsulto." It was held however that the assise should be taken. On the day appointed for the taking of the assise William de Abberbury produced another writ close from the King to the Justices, dated the 30th of August, 10 Edward III. The seizure of the chapel into the King's hand and the donation to Abberbury are stated in it, as well as the

[1] No distinction appears to have been drawn at this time between donation and collation.

intention of the Justices to proceed to the taking of the assise "inconsultis nobis." The following direction is then given to them: "auditis rationibus pro nobis et "jure nostro in præmissis coram vobis proponendis, "consideratoque in hac parte diligentius hujusmodi "jure nostro, ita circumspecte et provide vos in dicto "negotio habeatis quod nobis exheredatio aut præ-"judicium aliquod, nobis inconsultis, indebite non fiat."

After this the Sheriff was directed to remove all the original jurors of the assise and empanel others. The reason is not expressly stated in the record as transcribed upon the roll of *Placita de Banco,* but is thus given in one of the earlier drafts: "Quo brevi lecto, audito, et "intellecto, præfatisque Justiciariis considerationem inde "habentibus, ac etiam quod collatio prædictæ capellæ "per Majorem et Communitatem villæ Bedeford sæ-"pissime calumniata est sibi et non domino Regi "pertinere, videtur eisdem Justiciariis quod expediens "est pro Rege quod recognitio istius assisæ fiat per "forinsecos præcise et non per intrinsecos villæ præ-"dictæ. Ideo[1] præceptum fuit Vicecomiti quod, amotis "omnibus intrinsecis prius impanellatis, impanellari fa-"ceret xxiiij. de Gildabili tam milites quam alios liberos "et legales homines de ballia sua de visneto illo "magis sufficientes et minus suspectos quorum sex "sint milites ad minus, et quod tenementa illa interim "videant, et quod summoneret eos per bonos sum-"monitores."

After further adjournments the King sent a writ close (dated the 3rd of January, 11 Edward III.) to the Justices of Assise. It is therein recited that the chapel had been given to Abberbury for life, and that he had been "in "corporalem possessionem ejusdem capellæ per Ma-"jorem et Ballivos villæ prædictæ, juxta returnum "cujusdam brevis nostri eis per Vicecomitem nostrum

[1] The remainder of the extract is in accordance with the roll of *Placita de Banco.*

" Comitatus prædicti juxta libertates eisdem Majori et " Ballivis per chartas progenitorum nostrorum quondam " Regum Angliæ concessas factum, inductus." It is further recited that the King had been informed that, before the alleged disseisin of the plaintiff by Derby and others, the plaintiff " coram tunc Majore et Ballivis " dictæ villæ de Bedeford omni juri seu juris titulo " sibi ad dictam capellam competenti renunciaverit." The Justices were therefore to inquire of this renunciation "per sacramentum proborum et legalium homi- " num dictæ villæ de Bedeford,"[1] and to be careful " quod præjudicium aliquod nobis seu præfato Wil- " lelmo in hac parte nullatenus generetur."

The plaintiff, however, immediately produced another writ from the King to the Justices of Assise (dated the 23rd of April, 11 Edward III.). It was therein recited that the plaintiff had again presented a petition " coram nobis " in Concilio nostro in instanti Parliamento nostro," and the Justices were directed, as in the similar writ dated the 18th of November, 9 Edward III., to proceed to take the assise. Thereupon the assise was at last taken. The jurors found that the chapel was "de collatione Majoris " et Burgensium villæ Bedeford, et non de collatione " domini Regis," that the plaintiff had been in seisin of it "absque aliqua renunciatione inde facienda," that he had in fact never surrendered his estate, and that he had continued his seisin until disseised by Derby and others.

Judgment, however, was deferred, and there is a remarkable discrepancy at this stage of the proceedings between one of the draft Assise Rolls and the record as sent into the Common Bench. According to the latter,

[1] It is to be observed that this question of fact, being clearly out of point of assise, was, if considered by itself, to have been settled by a jury composed of persons other than the jurors of the assise. The assise, however, was eventually taken at large, and a verdict was given by the jurors of the assise upon this with other points.

on the day at length given by the Justices of Assise, the plaintiff produced another writ close from the King to the Justices, dated the 12th of February, 12 Edward III. It was therein recited that the plaintiff had presented "diversas petitiones suas coram nobis et Concilio "nostro in diversis Parliamentis nostris," setting forth his case, as already stated, that the Justices had been directed to take the assise, and that the plaintiff had presented another petition "coram nobis in Concilio nostro "in instanti Parliamento," complaining that, although the assise had been taken, judgment had not been given. The Justices were therefore commanded to proceed to give judgment "salvo semper jure nostro in hac parte." There were, however, further adjournments, until at length "recordum prædictum una cum brevibus et "panellis mittuntur in Banco, &c." Judgment was given in the Bench that the plaintiff should recover his seisin and damages.

For the proceedings mentioned in the last paragraph, however, there is in one of the draft Assise Rolls substituted a writ to the Justices of Assise, dated the 22nd of May, 13 Edward III., in which surprise and indignation are expressed because the Justices had taken "eandem "assisam non sine errore," notwithstanding that they had been commanded by divers writs to refrain from so doing. At the foot of this draft Assise Roll appears the following entry:—

"Isti rotuli et ista brevia fuerunt de assisa et pro-
"cessu tangentibus capellam super ponte de Bedeford.
"Quæ quidem brevia non irrotulantur in assisa, &c.
"Et quia processus ejusdem assisæ corrigitur et mit-
"titur in Banco, ut patet de Assisis de Bedeford R°.
"ij,[1] ideo de istis nihil amplius videndum est."

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[1] This appears to refer to the *Assise Roll*, 9–17 Edward III. (M 1 5 } 5), from which the transcript on the Roll of *Placita de Banco* seems to have been made.

It is not very easy to determine whether the numerous contradictory writs occurring in this case were wholly or partly of a formal nature, issuing as a matter of course on *ex parte* statements. The phrase "loquendum "cum Rege" points to actual personal interference on the part of the sovereign, but it might possibly be a form surviving beyond the times when the King was consulted in person. As affecting the legal question of the exercise of the prerogative, however, it matters but little how far the sovereign power was delegated to the Council, or by the Council to a Committee of their own body or to some subordinate officers. The effect, in delaying justice, is the same upon any hypothesis.

The final entry relating to the case on the *Placita de Banco* is this:—

"Postea in Octabis Sancti Hillarii, anno regni do-
"mini Regis nunc quartodecimo finiente, Dominus
"Rex mandavit breve suum Rogero Hillary Capitali
"Justiciario suo hic quod recordum et processum
"loquelæ prædictæ coram ipso mitteret, ita quod illa
"haberet in Octabis Sancti Hillarii ubicunque, &c."

The meaning of this is that there was a writ of Error returnable in the King's Bench. It was, indeed, a strange anomaly that although the aid of the King and Council might have been asked and obtained again and again before judgment was given in the Court below, yet if error was after judgment alleged in proceedings before Justices of Assise or in the Court of Common Pleas, the jurisdiction in Error was, in the reign of Edward III., as in later times, in the Court of King's Bench. I have not succeeded in finding the proceedings in Error in this particular case; but there is an old *Natura Brevium*,[1] of about this period, in MS., in which the jurisdiction is as clearly stated as in the later law

[1] Additional MS. in the British Museum, No. 22552.

books, and the theory as expressed in the *Natura Brevium* is abundantly confirmed by enrolments among the *Placita coram Rege* of proceedings in Error.

Growth of the functions of the Chancery.

There are many facts in relation to the functions of the Chancery, to its connexion with the Council and with the Common Law Judges, and to the growth of its equitable jurisdiction, which seem to have escaped the attention of the best and most industrious writers.[1]

Scire facias in Chancery, the Common Law Judges sitting there.

The *Scire facias* in the Chancery (the twelfth case in Hilary Term in the thirteenth year) perhaps deserves notice. It will be remarked that the Chancellor's name is not mentioned, and that the Judges whose names appear are Willoughby, Shardelowe, and Sharshulle. Willoughby (whose name is almost always given as Wilby in the MSS. of the Year-Books, and almost always as Wilughby or Wylughby in the records) was at this time Chief Justice of the King's Bench.[2] Shardelowe and Sharshulle were Justices of the Court of Common Pleas. It is therefore evident that the case was not heard by the Chancellor alone, if by the Chancellor at all. The presence of Willoughby at first suggests the idea that some issue in point of fact had been sent from the Chancery to be tried in the King's Bench. But the points which were being argued were points of law, and the presence of the Common Pleas Judges is sufficient to show that the King's Bench could not have been the Court in which they were sitting; nor could it have been said of that Court "*cest place nest forqe doffice.*" There is no doubt that the place of trial was that in

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[1] For instance, Reeves (*History of the English Law*), Lord Campbell (*Lives of the Chancellors*), Spence (*Equitable Jurisdiction of the Court of Chancery*), &c.

[2] His name so appears on the *Placita Coram Rege* of the period, and on the *Liberate Rolls* in which the payments of the judges are entered.

which the writ was returnable, and to which an inquisition mentioned in the report was sent—the Chancery.

Mareschal's case the King's power to record.

It is possible, indeed, to trace out the nature of the proceedings partly from the report and partly from other sources. Edward III. had granted to Michael Presfene the manor of Middleton-nigh-Belford in Northumberland, "which had belonged to David le Mareschal, a "Scot, by reason of whose forfeiture it had come into "the King's hand."[1] Presfene, the grantee, aliened the manor to Thomas Bamburgh. Mareschal, however, was restored to the King's favour.[2] A commission was directed to the Warden of Berwick to make further inquiry concerning Mareschal's alleged treason, and it was found that Mareschal had not been in any way disloyal. All this has, of course, a strange appearance to modern eyes—lands seized by the King's officer, treated as forfeit, and granted away to another person—all without any trial of the original holder—and afterwards a commission to inquire of the facts. It is, however, necessary to remember that one who found himself under suspicion of treason usually absconded, that he was then commonly outlawed, and after outlawry was practically in the same position as one who had been condemned. He forfeited his lands, and if taken could be executed without further trial. It is said in the report that Mareschal was or had been "*hors de la ley*," but it seems that he had not been outlawed by regular process of outlawry.

Hence arose a question concerning the King's power of recording,[3] and a very clear statement of the law on that point by Willoughby, Ch. J. For the defendants it was said that the King had himself recorded that

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[1] *Patent Roll*, 9 Edw. III., part 2, m. 18.

[2] See various entries of this period published in the "*Rotuli* "*Scotiæ*," pp. 523 a, 530 b, 541 a.

[3] See some matter illustrating this subject in my Preface to the volume of *Year-Books*, 11 and 12 Edward III., pp. xxxiii–xxxiv.

Mareschal had levied war against him, and that Mareschal was therefore *ipso facto* out of the protection of the law, and not entitled to an answer. Birtoun on the other hand (Mareschal's counsel) alleged that by statute the King ought not to record except in the way of due process, that as there had been no due process in this case the plaintiff sued to the King to be restored to the law, and was so restored after the commission to the Warden of Berwick and the inquisition which followed it. To what statute Birtoun referred it is not easy to ascertain; and although Willoughby allowed that Mareschal was entitled to an answer, it was on a different ground. The Chief Justice said not only that the King could record, but that when he recorded anything as of his own view the record could not be annulled, and said further that if the King recorded upon the information of others the record could only be defeated in the mode adopted by the plaintiff.

The main facts, which appear to have been admitted on both sides, were the outlawry of Mareschal (whether actual, or simply constructive because he had fled), the seizure of his manor, the grant of it by the King to Presfene, the alienation by the grantee, the commission to the Warden of Berwick, and an inquiry (which, however, the defendants said was not duly taken) following on that commission. Mareschal, who (and not the King) seems to have been regarded throughout as technically the plaintiff, obtained the *Scire facias* to compel the King's grantee and the grantee's alienee to show cause why the manor should not be re-seized into the King's hand for the purpose of being restored to himself.

Matters relating to *Scire facias* on the Rolls of Parliament.

There are many passages in the Rolls of Parliament which illustrate this mode of proceeding. Thus in a somewhat similar case one Thomas de Fynmer presented a petition to the King and Council showing that, by reason of an Inquest of Office taken before the Escheator of the County of York, he had been ousted from his

lands notwithstanding the fact that another Inquest of Office taken before the same Escheator had found in his favour. The answer was—"Let this petition be "delivered into the Chancery, and after the Offices "whereof mention is made in the petition have been "viewed and examined, let right be done to the party "by writ of *Scire facias*."[1]

The Justices of the two Benches frequently called into the Chancery by the Chancellor.

The writ of *Scire facias* having thus issued from the Chancery, the proceedings, there can be but little doubt, were of the nature of those of which complaint was made in a subsequent reign:[2]—"The Commons pray "that—in consideration of the very great mischiefs "which occur in your Court of Chancery, because, for "the discussion of all pleas relating to matters tra-"versed in the said Court, your Judges of your Benches "called the King's Bench and the Common Bench are "drawn into the said Chancery out of their own places, "in aid of the discussion of the said matters therein, "to the great delay of the administration of the com-"mon laws[3] of your kingdom and to the very great "damage of your lieges—you would be pleased in this "present Parliament to ordain that, when any one of "your lieges comes into your Court of Chancery aforesaid "and offers himself to traverse any office there, or any "writ of *Scire facias* issues out of the said Chancery, "the said writ and the offices so offered to be traversed "be sent and also returned into one of your said Courts "of King's Bench or Common Bench, there to be dis-"cussed and determined according to your laws, saving

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[1] 2 *Rot. Parl.*, 399 b. (*Anno incerto* Edw. III.)

[2] Original *Parliament Roll*, 2 Henry IV., No. 95.

[3] Printed thus in 3 *Rot. Parl.* 474 b.:—"A grant arerisment de "l'esploit de voz comunes, Leys de "vostre Roialme," &c. But there is no comma or other punctuation between the word "comunes" and the word "leys" (which is not written with a capital initial) in the original. There can be but little doubt that the common law is meant. This is a remarkable illustration of the effect of introducing capitals and commas which are not in the original document.

" always to your Court of Chancery matters delivered " upon offices returned before them, without traverse " offered, according to the customs there formerly " used." The answer was:—"The Chancellor can do " this by virtue of his office; and be it as it has been " accustomed to be heretofore at the discretion of the " Chancellor for the time being."

This fully explains the presence of Willoughby, Shardelowe, and Sharshulle in the Chancery. The assistance of skilled lawyers was obviously necessary at a time when the Chancellor was an ecclesiastic, and when he could hardly have been competent to pronounce how warranty was to be saved to the alienee of the King's grantee if the grant were revoked, and whether one who had sued a *Scire facias* in the Chancery ought not rather to have been a demandant in a Writ of Right, or a plaintiff in an Assise of Novel Disseisin.

The forms of judgment in proceedings which have been commonly regarded as being on the Common Law side of the Chancery.

No efforts have been spared to find the proceedings in this case among the Public Records, and, as the Patent Roll showed the county in which the manor lay, there was a reasonable hope of success. The series of documents entitled *County Placita* has been very carefully searched; but this particular case is not included among the *County Placita* of Northumberland. The *County Placita*, however, do contain proceedings which are commonly classed as belonging to the Common Law side of the Court of Chancery, and among them proceedings upon *Scire facias*. They are headed, "*Placita* " *coram domino Rege in Cancellaria sua.*" In them the constitution of the Court is not usually stated, but the Court seems rarely to have pronounced judgment on its own authority alone,[1] unless indeed the Court is to be identified with the King's Council or a Committee of

[1] In later times it seems to have been considered that it was for the Chancellor to give judgment, the Common Law Judges sitting as his assessors. See the case (in the reign of James I.) of the King *v.* Butler, 2 *Ventris*, 344, and (in error) 3 *Levinz*, 120.

Council. Among the forms which occur are the following:—"Habita plena deliberatione cum toto Concilio "domini Regis, videtur Curiæ,"[1] &c.; "De avisamento "Justiciariorum et Servientium ipsius domini Regis ad "Legem, ac aliorum peritorum de Concilio ejusdem do-"mini Regis in eadem Cancellaria adtunc [existen-"tium], consideratum fuit tunc ibidem quod literæ "prædictæ revocentur et adnullentur;"[2] "De avisa-"mento domini Cancellarii Angliæ, Justiciariorum, "Servientium ad Legem, et Attornati ipsius domini "Regis consideratum est," &c. Of course, if the parties joined issue upon a question of fact, the Sheriff had to summon a jury and a day was given, usually "coram domino Rege ubicunque tunc fuerit in Anglia," that is to say, in the Court of King's Bench.

The proceedings were, like those in Equity, outside the ordinary course of the Common Law.

A consideration of the forms in which judgment was given in the Chancery may, perhaps, modify the opinions commonly held in relation to proceedings upon *Scire facias* and some other judicial proceedings which are regarded as having always belonged to the ordinary jurisdiction or Common Law side of the Court.[3] They certainly did in the end become very distinct from proceedings on the Equity side, but it is not by any means clear that they

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[1] *County Placita* (Chancery), Northumberland, No. 8 (44 Edward III.).

[2] *County Placita* (Chancery), Northumberland, No. 14 (17 Henry VI.).

[3] Spence (1 *Equitable Jurisdiction of the Court of Chancery*, 336, 337) assumes that proceedings on *Scire facias* in Chancery were always part of the ordinary jurisdiction of the Court, and he was apparently not aware of the facts stated in the text, which are far more in accordance with his description of the extraordinary jurisdiction. Sir F. Palgrave, however, who was well acquainted with the Rolls of Parliament, has expressed himself very differently: "During "the reigns of Edward I. and II. "there was a frequent exercise of "the original jurisdiction of the "*Council* in cases concerning the "King, or which did not appear "within the competency of the or-"dinary Courts. The process by "which the defendant was called "into Court was the writ of *Scire* "*facias*." *Original Authority of the King's Council*, 34.

were different in origin. They were extraordinary remedies applied in circumstances outside the ordinary course of the Common Law. They often followed upon petition to the King, or the King and Council, and (except when the matter could be resolved into an issue in fact upon which a jury could give a verdict) they do not appear to have passed out of the control of the Council. They were held in the Chancery, it is true, but apparently because they related to matters returned into Chancery (as Inquests of Office) or to matters enrolled upon the Chancery Rolls—as, for instance, Letters Patent which might be repealed through *Scire facias.* Though they were in the Chancery, they were not, in the fourteenth or fifteenth centuries, before the Chancellor alone, nor necessarily, perhaps, before the Chancellor at all, and they were commonly there by direction of the Council, which seems to have exercised a strict supervision over the judgments given. The origin of the equitable jurisdiction of the Court of Chancery is believed to have been precisely the same.

Proceedings on *Scire facias* in the Chancery not regarded as being at common law in the reign of Edward III.

It appears, moreover, in the report of the *Scire facias* in Mareschal's case, and elsewhere, that the proceedings upon a *Scire facias* were not regarded as being at common law. It is true that the distinction intended may have been not between the common law and any extraordinary jurisdiction, but between the common law and the statute law. The statute *De Escaetoribus*[1] may have been regarded as the law which was being administered, and if the report stood alone this explanation might be considered sufficient. But in the passage from the Rolls of Parliament already quoted (p. civ.) there seems to be a distinction drawn between proceedings in Chancery on *Scire facias* and proceedings at Common Law, and it seems to have been desired that the writs of *Scire facias* issuing out of the Chancery should be made returnable

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29 Edw. I. (the Statute of Lincoln); and *see* Staunford's *Exposition of the King's Prerogative*, Tit. *Reseiser.*

in the Court of King's Bench or Court of Common Pleas "*to be discussed and determined according to your* "*laws.*" The only reasonable inference appears to be that in the Chancery they were discussed in another manner, which, whether equitable or not, was not in accordance with the practice of the Common Law.

The distinction, indeed, between the ordinary and the extraordinary jurisdiction of the Court was not, and could not, in the nature of things, be drawn until proceedings in Equity by Bill had come within the range of every day practice. The opinion of the older authorities, too, was in accordance with the documents to which reference has been made in the present Introduction rather than with the views held by Spence and adopted by other writers. Thus, in Staunford's "*Expo-* "*sition of the King's Prerogative,*"[1] attention is called to a decision which distinctly refers some, at least, of the proceedings in relation to *Scire facias* to the equitable jurisdiction of the Court: "And in 14 Ed. IV. fo. 7,[2] it "appeareth that one had traversed an Office which was "sent into the King's Bench to try, and had forgotten "to sue his *Scire facias*, and yet he was suffered to go "again into the Chancery to pray a *Scire facias* upon "the first traverse, *for it was said that the Chancery is a* "*Court of Conscience*, and for that cause the thing that "was there amiss may be reformed at all times."

Early proceedings by Bill in Chancery: judgment precisely similar in form to that given upon *Scire facias.*

In the seventh year of the reign of Henry V. occurred the following case[3] (hitherto I believe unpublished), which is remarkable as being one of the very first, perhaps absolutely the first, in which proceedings by Bill addressed to the Chancellor may be traced from the presentation of the Bill, through the *Subpœna*, and

[1] Staunford's *Exposition*, &c. (A.D. 1590), p. 77.

[2] This case is cited also in Brooke's Abridgment, *Traverse*, 39.

[3] *County Placita* (Chancery), Essex, No. 75.

through the pleadings, to the final decision.[1] It is not less remarkable as showing that the decision was in a form precisely similar to that which it would have taken in proceedings upon *Scire facias,* and as being found among the so-called common law documents of the Court of Chancery mixed with proceedings upon *Scire facias* themselves.

A large piece of parchment bears the heading :—
" Placita coram domino Rege in Cancellaria sua apud
" Westmonasterium in Octabis Sancti Michaelis anno
" regni Regis Henrici quinti post conquestum sep-
" timo."

The entry commences thus :—

"Memorandum quod Johannes Hals [and several
" others] exhibuerunt Venerabili in Christo patri
" Thomæ Episcopo Dunolmensi, Cancellario Angliæ,
" quandam *Billam* quæ sequitur in hæc verba."

The Bill itself follows, in French. The plaintiffs pray that (whereas one John Hyncley had tortiously disseised the plaintiffs, since the last passage of the King into Normandy, of the manor and advowson of Pentelowe with the appurtenances, and whereas it had been ordained by the King, at the time of his passage, that no assise of Novel Disseisin should be pursued against any one until he should return into England, and therefore, they could not have the remedy of assise of Novel Disseisin to recover the manor and advowson) the Chancellor would be pleased to cause the said John Hyncley to answer why the plaintiffs should not be restored to possession.

Thereupon followed *Subpœna* to Hyncley.

Hyncley appeared, prayed oyer of the Bill, and

[1] The Bills of earlier date printed by the Record Commission will be found, as a rule, to give no indication of the further proceedings. They show that there was a Bill presented directly to the Chancellor, and not to the King or Council, and that is all.

answered, stating matters of fact which he was "para-
" tus verificare prout Curia, &c."

The plaintiffs replied, also stating matters of fact, and they also were "parati verificare, &c.;" and they prayed restoration to possession.

Hyncley rejoined, again stating matters of fact, which he was again "paratus verificare." He prayed judgment (*judicium*) and that the plaintiffs might be precluded from restitution to possession.

The plaintiffs surrejoined, still setting forth certain matters of fact, "et hæc omnia petunt quod inquiran-
" tur per patriam."

Then follows a special commission to certain persons (not described as Justices) to inquire "per sacramentum "proborum et legalium hominum de comitatu Essexiæ," as to the matters of fact in dispute—the return to be made into the Chancery.

The Commissioners make their return into Chancery —the verdict being for the plaintiffs.

The plaintiffs pray restitution to possession, and mesne profits.

"Super quo, habita super præmissis matura et dili-
" genti deliberatione cum Justiciariis et Servientibus
" dicti domini Regis ad Legem, ac aliis peritis de Con-
" cilio suo in Cancellaria prædicta existentibus, de
" eorum avisamento consideratum est quod prædicti
" Johannes Hals [and the other plaintiffs] ad posses-
" sionem suam manerii et advocationis prædictorum,
" cum pertinentiis, una cum exitibus de eodem manerio
" a prædicto die Mercurii perceptis, restituantur."

Suggestions relating to the growth of the extraordinary jurisdiction of the Chancery, founded on

It seems therefore reasonable to infer that as late as the reign of Henry V. there was no distinction, such as was afterwards recognised, between the ordinary or common law and the extraordinary or equitable jurisdiction of the Court of Chancery. If there was any distinction at all it was between the Chancery as the *Officina Brevium*, the source of common law writs, and

the Chancery as a place for hearing and determining causes.

original documents.

If this suggestion is correct the early proceedings on *Scire facias* in the Chancery have an additional interest, partly as showing the growth of the extraordinary jurisdiction of the Court of Chancery, and partly as showing how that extraordinary jurisdiction itself diverged into two different streams, one of which was supposed to flow on the common law side of the Court, and the other on the equity side. This opinion is, no doubt, very different from those held by Spence and other writers of high authority, but as they were not acquainted with the original documents upon which it is founded, there is the less presumption in venturing to differ from them.

The amount of apparent litigation in the reign of Edward III. out of all proportion to the population.

A case[1] in which John de Stonore, knight, (in all probability the Chief Justice of the Common Pleas) was a party seems to throw some light on certain facts which are, at first sight, very perplexing to the student of history, and most of all to any one who knows from the contemporary records what was the social condition of the country, how rough were the manners, how numerous and how grave the crimes. In an age which, if only the breaches of law were regarded, might almost be called lawless, there is the remarkable phenomenon not only of lengthy and continuous law reports, which relate for the most part to real property, but also of corresponding records which are of a bulk that might *a priori* be thought impossible. How is so great an apparent respect for the law on the one hand to be reconciled with the demonstrable fact that the law was habitually set at defiance on the other hand? The truth appears to be that the same causes produced both effects, and that when we see courts and counsel and legal forms

[1] No. 51 in Easter Term in the thirteenth year.

employed to secure property on one side, and knights and their followers engaged in brigandage on the other side, we are simply contemplating the same state of society in two different aspects.

The causes.

In cases of disseisin *vi et armis* the turbulence of the people may itself have contributed to multiply actions at law, but after every allowance has been made for this cause it seems hardly possible that, with such a population as England possessed in the first half of the fourteenth century, there could have been so much actual litigation as the entries upon the rolls might appear to indicate. The same cause, however, may have produced the effect in another way.

Fines: assurance by matter of record.

The Fines, of which the origin is lost in a remote antiquity, and the Recoveries of a later period may suggest a possible explanation. This indeed was an age in which the mode of assurance by the fine itself seems to have been in an intermediate stage. It had become, it had probably been as early as the reign of Henry I.,[1] almost a matter of form, and yet it was not in every instance regarded as being purely a fictitious action. It was not merely an assurance by matter of record, and yet, unless some difficult question arose, it was very little more. The remarkable case in which the *Dedimus potestatem* issued at Antwerp[2] shows that the fine was regarded as an action (usually upon a writ of Covenant) in which all the objections and arguments possible in an action might be brought to bear. When disputes arose, as in that case, the matter was recorded among the rolls of *Placita de Banco,* but in ordinary cases no enrolment was necessary before the reign of Henry IV. The fine was of record,

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[1] An account of money payable "*pro conventione de terra,*" as distinguished from *placita* actually litigated, appears on the earliest of the Great Rolls of the Exchequer (31 Henry I.), under the head of Nottinghamshire and Derbyshire.

[2] No. 9 in Easter Term in the thirteenth year; and see above, pp. lxxxv–xci.

but not usually entered upon the roll, which was swollen to its enormous dimensions from other sources.

Various actions at law used for the purpose of giving greater security to conveyances before the introduction of the common recovery.

The existence, however, of such a mode of assurance as the fine could hardly fail to suggest other methods of assurance by matter of record. It has usually been supposed that the best known other method, the Common Recovery, came into use not earlier than the reign of Edward IV., and then for the purpose of barring estates tail and others. The common recovery ordinarily took the form of a writ of Entry with as many vouchers as might be necessary. But the term recovery was very early used to express the fact of recovering what was claimed in any kind of action, real or otherwise; and though the common recovery became best known in conjunction with the fine as a conveyance under the semblance of an action at law, there is very strong reason to suspect that actions at law were employed, if not as conveyances, at any rate for the purpose of giving greater security to conveyances in a manner distinct both from the fine of earlier times and from the common recovery of later times, and for reasons which may be discovered in the lawlessness of the age.

Illustration from a *Quare impedit* in which Chief Justice Stonore was probably a party.

To return to the case which has in part suggested these remarks, Stonore brought an action of *Quare impedit* against the Prioress of Marlow. The Prioress pleaded Stonore's deed conveying the advowson, with the King's license to aliene in mortmain, and the consent of the Ordinary to the Appropriation. Stonore's counsel admitted the facts, saving to him the nomination of the Vicar to be presented by the Prioress, which the Prioress admitted to be according to the terms of an agreement made between her and him. And so judgment was entered for the defendant.

It is hardly possible that there could have been any hostile litigation here. Stonore had purchased separately the advowsons of two moieties of the church of Little Marlow and an acre of land with each in order to make

the conveyance good. He had then, as appears by the record, conveyed the whole to the Prioress after having taken all the necessary steps to secure the consolidation and appropriation in legal form; but he reserved to himself and his heirs the right to nominate the Vicar, though the Prioress and her successors were to present the nominee.

Light thrown by it upon the customs of the age and the internal arrangements of a nunnery.

Although however, the whole transaction was in the main for the benefit of the religious house, there were certain provisions for the advantage of Stonore's two sisters and daughter, who were nuns in the Priory of Marlow. The passage in which this is shown may be considered of interest not only in relation to the legal aspects of the case, but also as an illustration of the manners of the times, of the means by which exceptional privileges might be obtained for the members of wealthy or distinguished families after they had entered a nunnery, and even of the mode in which benefactors might have a voice in the internal arrangements of a monastery.

In the plea of the Prioress there appears an indenture made between the Prioress and Nuns of Marlow, of the one part, and John de Stonore of the other part, in which are recited the gift made with the King's license, the appropriation and consolidation, and the seisin given by Stonore, but "faciendo inde et inveniendo secundum ordinationem dicti Johannis" [de Stonore]. Then follows this remarkable passage:—
"Et prædictæ Priorissa et Moniales prædictas terram et
" advocationem tali conditione acceptarunt quod illæ
" eandem ordinationem perficient, et pro se et succes-
" soribus suis sine contradictione aliquali in perpetuum
" continuent. Dictus insuper Johannes ordinavit et con-
" stituit quod cum dicta Priorissa et Moniales receperint
" fructus ejusdem ecclesiæ, ut in bladis, fœnis, et aliis
" proficuis exinde primo anno provenientibus, excepta
" portione pro Vicaria ordinanda, quod extunc dictæ

"Priorissa et Moniales invenient Johannæ et "Cæciliæ, sororibus ejusdem Johannis, quadraginta "solidos per annum, et Katerinæ, filiæ prædicti "Johannis, quadraginta solidos per annum, monialibus "loci prædicti, tota vita ipsarum Johannæ, Cæciliæ, "et Katerinæ, et etiam pro sustentatione omnium "monialium ejusdem loci in augmentationem coquinæ "suæ qualibet hebdomada per annum dimidiam "marcam argenti, et pro vestura viginti monialium "ibidem Deo servientium singulis annis centum "solidos argenti æqualiter inter ipsas participandos. "Præterea ordinatum est per dictum Johannem quod "post decessum prædictarum Johannæ, Cæciliæ, et "Katerinæ, quod sex marcæ prædictæ quas eædem "Johanna, Cæcilia et Katerina in vita sua perceperint "amplius alicui seu aliquibus non solvantur, sed "remaneant Priorissæ et Monialibus loci prædicti in "perpetuum, exceptis decem solidis pro vestura Prio-"rissæ et dimidia marca argenti pro vestura Supprio-"rissæ quæ pro tempore fuerit in perpetuum, ordi-"natione prædicta in perpetuum duratura." [1]

There was a power of distress to Stonore and his heirs in case of non-observance of the "ordinatio in-perpetuum duratura."

Advantage of having matters recorded on the roll of *Placita de Banco.*

This was a settlement of a somewhat complicated nature, for which Stonore evidently wished to have every possible security. He could hardly have brought the action for the purpose of undoing that which he had taken so much pains to effect; and if he had brought it for that purpose upon the succession of a new Prioress [2] or otherwise, he would hardly have admitted that the

[1] *Placita de Banco*, Easter, 13 Edward III., R°. 307, d.

[2] From the information which has been collected on this subject by Dugdale (4 *Monasticon*, 419), it appears that Rohesia de Weston was elected Prioress in 1305, and her successor seems to have been Joan de Stonore, who was Prioress in 1343 and died in 1349. This Joan was, no doubt, Stonore's sister, mentioned above.

facts were precisely as stated by the defendant, nor would the defendant have admitted that the facts were as stated by him. His object almost certainly was to have the whole matter entered of record upon the roll of *Placita de Banco*, with judgment given upon it. No one probably knew better than he how unsettled was the state of society, how frequently deeds disappeared or were altered, and how difficult it was to prove anything not carefully recorded on the principal roll of the Court.

Such was the character of the age that even the Notes and Feet of Fines were not safe in their several places of custody, but were commonly abstracted, and forgeries were substituted in their place. An Act was passed in the reign of Henry IV. for the special purpose of rectifying as far as possible what had occurred in the past, and of preventing similar frauds in the future.[1] The most important provision was that the several instruments used in fines should thenceforth be enrolled. Experience had, no doubt, shown that it was far more difficult and dangerous to carry off a bulky roll than to abstract a single document. The rolls of *Placita de Banco* were not only bulky, but the skins of which they were made up were, at this period, numbered consecutively. A dishonest clerk would therefore almost certainly be detected if he attempted to carry off the roll; and if he abstracted one of the skins, the fact that a number was missing would probably be very soon discovered. Whatever might be entered upon these rolls would therefore have the best possible chance of remaining *in perpetuam rei memoriam.*

Common use of the forms of actions for that purpose.

Stonore's case seems hardly to admit of a doubt that the form of an action of *Quare impedit* was used for the purpose of effecting an assurance by matter of record, and there are many other cases[2] which suggest the idea

[1] 5 Hen. IV. c. 14.

[2] Among them another *Quare impedit*, in which the famous Herle seems to have been a party. See No. 37 in Trinity Term.

that the forms of actions, quite distinct from fines, and from the later common recoveries, were used in a similar manner. If so, the great bulk of the Rolls of *Placita de Banco* becomes more intelligible, as they practically contain conveyances as well as the records of actions actually litigated, and they at the same time show the anxiety of landowners to obtain some security for their settlements in times of very great insecurity.

Growth of legal doctrines: anticipation of the Rule in Shelley's case.

In the fifth case in Hilary Term, in the thirteenth year, is a decision which may, perhaps, be regarded as an anticipation of the rule in Shelley's case. It is, like many others, reported in two different forms, but that which I have placed first (from the Additional MS., No. 16,560) is more in detail, and probably more correct. An attempt was made to convey land by a fine to a man and his wife for their two lives, with *remainder* after their death to the *heirs* of the husband. This was not permitted, and it was said that the conveyance should have been to the husband and the wife and the heirs of the husband, so that, though the decision was not so ex-expressed, the word "heirs" was practically regarded as a word of limitation and not of purchase. The reason assigned by the Judge (Sharshulle, or Shardelowe) was not the reason usually assigned in later law-books—that the effect of allowing such a remainder might be to deprive the lord of his wardship and other advantages —but the maxim *nemo est heres viventis.* There was the further objection that no action for waste would lie against the husband, but this seems to be no more than a re-statement of the doctrine that he could not take merely an estate for life by such a conveyance.

The other report of the case, which occurs in three MSS., and agrees with Fitzherbert's *Abridgment*, is in one respect simpler, but the meaning is not quite so clear. It is there stated that the fine was in the form

of a conveyance to a man for life with *remainder* after his death to his *heirs*. This was refused by the Court, not for the reason above assigned, but because there was no limitation of a mesne estate. The rule in Shelley's case[1] was that where in any instrument an estate for life is given to the ancestor, and afterwards by the same instrument the inheritance is limited *either mediately or immediately* to his heirs, or the heirs of his body as a class, to take in succession to him, the word "heirs" is a word of limitation and not of purchase, and the ancestor takes the whole estate. If therefore the expression "mesne estate" in the report were taken to signify an estate interposed between that of the cognisee and that of his heirs, the decision would be at variance not only with the later doctrine, but also with the other report of the same date, and with the maxim *nemo est heres viventis*. The meaning, however, probably is that if the intention was to create a remainder, and not to give the cognisee an estate in fee in possession, it should have been carried into effect by limiting some antecedent estate to another person with remainder in fee to the cognisee.

Anticipation of a modern construction of statutory law.

The innovations of the statutory law necessarily caused many points to be raised concerning the interpretation of statutes. An instance, which appears very remarkable when we remember that it occurred about five centuries and a half ago, is to be found in the eighteenth case in Michaelmas Term, 12 Edward III. The report is very brief (consisting of only 10 lines), but it seems to warrant the following remarks.

It had been enacted by the second chapter of the Statute of Westminster the Second that when lords of fees who had distrained *for services and customs* had been attached in the County or other Court having juris-

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[1] 1 *Rep.* 104, *et seq.*

diction *de vetito namio,* they could remove the cause and bring it before the King's Justices. It had also been enacted near the end of the same chapter that, when cattle distrained had been a second time replevied by the tenant, and the Return had been a second time adjudged, the Return should then be irreplevisable. There is, it will be observed, no mention of services and customs in this part of the statute. A plaintiff in Replevin was nonsuited after a writ of Second Deliverance, but Stouford, his counsel, prayed that the Return should not be adjudged irreplevisable. He said practically that only special cases were within the purview of the statute as limited in the earlier part, "*quia statu-*" *tum est generale in fine.*" The expression is at first sight difficult to understand, because it appears to assign the existence of general words as a reason for giving the statute only a special application. But this would be self-contradictory and inconsistent with the context. Stouford's intention must clearly have been to point out not there are general words at the end of the statute but that the general words which are in the statute are at the end, and must be governed by the particular words which precede. He was, in fact, enunciating, in the year 1338, a principle which is good law at the present time, and which is illustrated by modern cases.

Judgment was given against the plaintiff, though not expressly against Stouford's point. He had argued not that the distress had been for a cause other than services or customs due, but that the Court was not apprised that it had been for services due. The decision, however, turned upon some other words in the statute, from which there was clearly no escape. The writ of Second Deliverance had to be sued "out of the rolls of the "Justices into whose Court the cause had been removed." The plaintiff, himself, had therefore admitted his case to be within the statute when he had sued his writ "out "of the rolls." Stouford's ingenious attempt to evade

the statute was therefore unsuccessful, but it is none the less remarkable as a very early statement of a doctrine which might, perhaps, otherwise have been regarded as more recent, and of a doctrine which the Judges (though they may not have affirmed it) do not appear to have denied.

Land held in villenage: surrender to uses by customary tenants.

There is one case[1] in the present volume which throws a little light at once upon customary tenure, and upon the early existence of uses. It shows that the custom of surrendering to uses in the court of the lord of a manor was already in existence. It is of interest, as illustrating the doubts entertained concerning the exact position of villeins and of freemen tenants of land held in villenage. The facts are reproduced in another form in a report to be printed in the next volume.[2] In the meantime it may be pointed out that the surrender by one person, to the use of another, of land held according to the custom of a manor appears at least as early as the conveyance of freehold land to one for the use of another. The principle is indeed the same in both cases, for the customary tenant who was an alienor reposed a trust in the lord for him or his bailiff or steward to give possession to the intended alienee.

Executors and administrators.

It will be observed that at this period executors are said to "administer."[3] It is commonly held that at common law, and before the Act 31 Edward III. c. 11.,

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[1] No. 27 in Easter Term in the thirteenth year.

[2] No. 54 in Michaelmas Term in the thirteenth year. Mr. Elton, in his *Treatise on the Law of Copyholds*, p. 5, has pointed out (citing Co. Litt. 58a.) that customary tenants were called tenants by copy of court roll as early as 42 Edward III. See the *Year-books* of that year, Report No. 9 in Michaelmas term. It is, perhaps, worthy of remark, in relation to the date, that there is no mention or suggestion of the existence of any such roll in either of the reports or either of the records relating to this particular manor in 13 Edward III.

[3] See Nos. 2 and 41 in Hilary Term in the thirteenth year.

no one was chargeable as administrator, and that any one who possessed himself of the goods of an intestate was chargeable by the name of executor.[1] It is clear from cases in the present volume that any one who took upon himself to "administer" made himself responsible as an executor. It is not, however, equally clear that "administrator" was an unknown term, though it was not used in the later technical signification of one to whom the administration of the estate of an intestate was committed. On the contrary the term seems to have been applicable to all executors, as well to those named in a will as to one who acted *de son tort*. This, indeed, seems to be the only explanation of a very difficult passage in the second report of the eighth case in Trinity Term in the thirteenth year. The word "*ministres*" probably means administrators, or in some sense or other the persons who administered. It might, of course, be translated "ministers" or "officers"; but, although more than one conjecture might be made, it is not clear to what officers the term could have been intended to apply. Coupled, however, as the word is with the word "executors," it seems most probable that the intention was to include by the two expressions all who were executors or who had administered, whether expressly named as executors in a will or not.

Appeal of Felony: contradic-

The Appeal of Murder (No. 45 of Hilary Term in the thirteenth year) is a good illustration of the law in

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[1] 5 *Rep.* 82 (Snelling's case): "None was chargeable by name of "administrator before 31 Edward "III. . . . Yet . . . they were "chargeable at common law as ex-"ecutors for their administration, so "that the name of the charge is only "changed; and yet in substance is "all one, for every executor is an "administrator of goods, and the "pleading is *ne unques executor, ne* "*unques administravit*, as execu-"tor."

tory opinions: Britton and Staunford.

accordance with the views of Staunford[1] as distinguished from the law laid down by Britton. According to Britton,[2] process of outlawry could be awarded in the County Court against the appellees. But this, as Staunford observes, seems to be contrary to the provision of *Magna Charta*, that no Sheriff, Constable, Escheator, or Coroner should hold pleas of the Crown; and he thought the better opinion was that when an appeal was commenced before the Sheriff and Coroner they might award process up to the Exigent, but not the Exigent itself. In the case in the present volume the Exigent had been awarded in the County Court, and Willoughby, Ch. J, K. B., though he seems to have hesitated, adjudged that the Sheriff should be amerced. But, as Staunford has remarked, there was a case[3] (very near this period) in which a decision was given in accordance with the teaching of Britton.

On the other hand, it was ruled by Willoughby in the present case that a *certiorari* directed to the Sheriff alone for the purpose of removing the appeal into the Court of Common Pleas was good. It was contended by counsel that the writ should have been directed to the Coroner as well, and, as Staunford has pointed out, it was so held on another occasion, and the form in the Register of Judicial Writs is "*Vicecomiti et Corona-*" *toribus.*" It is strange that there should have been any uncertainty with regard to the law in relation to anything of such frequent occurrence as an appeal of felony. The reason probably is that the reports of criminal cases are very few in number as compared with those of real actions, and as compared with the records of the criminal cases themselves. This branch of the law seems to have been less carefully studied than others.

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[1] *Les Plees del Coron* (1583), p. 64 (Lib. 2, cap. 14).

[2] Lib. I., c. 2, § 8. (1 Nichols, p. 12.)

[3] 22 *Li. Ass.* 97.

The form of doing homage by baron and feme in No. 50 of Hilary Term in the thirteenth year varies a little from that given by Littleton,[1] by whom it is taken from a case two years later in date. According to the case cited by Littleton both the husband and the wife held their hands joined between the hands of the superior lord; according to the case now printed the husband alone so held his hands. There is a slight variation also in the words, the husband saying "I" in the present case, and "We" in Littleton's case. In the present case, too, the form of homage is followed by a form of acknowledgment of liability to suit, in which the husband said "we" (speaking for the wife as his wife). It will be observed that both forms avoid the difficulty somewhat quaintly pointed out by Littleton as arising when a woman had to do homage "pur ceo qe nest convenient "qe feme dirra qe el deviendra feme a ascun homme "forsqe a sa baron quant el est epouse." Form of doing homage.

The case cited by Littleton has never been printed in the series of Year-Books, but it was printed after Littleton's time in Fitzherbert's *Abridgment*.[2] Coke has on this subject observed, "how necessary and profitable "records and observations are, albeit they were not "published in print, for, at the time when Littleton "wrote, this record was not printed." The report now published contains more details than that which called forth this commendation, and it is not impossible that when the time comes for the collation of the original MSS. of the case printed by Fitzherbert (Mich. 15 Ed. III.) the subject may be still further illustrated. Coke's remark on a less complete form.

One of the reports[3] in the present volume affords some material for the consideration of the pathologist. It is Remarkable case of a man

[1] Co. Litt. 66.
[2] Tit. *Avowre*, 109.
[3] No. 5 in Easter Term in the thirteenth Year.

who was dumb but not deaf.

commonly supposed that a person who is dumb is necessarily deaf, and the supposition is probably correct whenever the infirmity is congenital. In the present case, however, it appears that a dumb man heard perfectly well, and was able to gesticulate for the purpose of making himself understood. Whether this was an instance of the malady known as *aphasia*, which some physiologists have professed to localise in a particular part of the brain, or was an instance of partial paralysis not susceptible of further definition it may be left to the experts of another profession to determine. Of the fact, as stated, there cannot be the least doubt. The report occurs in two different forms, one in one MS. the other in three other MSS., and in the latter form it was known to Fitzherbert. There is not the slightest reason to suspect any imposture, for the man wished to wage his law, and there was no possible motive which would have induced him to pretend to be dumb when he was not.

Matters of general historical interest: manners of the age.

In the cases already noticed in this Introduction there are many matters which incidentally illustrate the manners of the age as well as the administration of the law and the history of the law and of the constitution. Other interesting details are to be found either in the reports or in the corresponding records, but they are too numerous to be set forth at length. It may, however, be permissible briefly to draw attention to a few of them. A father wishing to make some provision for an infant daughter delivers to an Abbot various articles of domestic utility, and a sealed bag containing 20*l.*, to be re-delivered to the daughter when of full age, at her will.[1] The value attached to the possession of a Court Leet and the presentments in it is a cause of great litigation, in which is elicited the doctrine that there may be a Leet within a

[1] No. 34 in Easter Term.

Leet.[1] The action by the holders of the market at Sutton-nigh-Hykeling, in respect of an alleged nuisance in setting up a market at Worsted, shows in a general way the kind of wares bought and sold, including silk and sendal.[2] Elsewhere it is seen how an Abbot granted to a clerk in Holy Orders an annuity terminable upon his advancement to a suitable benefice.[3] The University of Cambridge appears in one of the reports,[4] where is found the expression "Master of the Scholars, &c. of Cambridge" though the words in the record are "Wal-" terus de Thakstede, *Magister Aulæ Universitatis.*" Several pedigrees are traced, especially in the actions of *Quare impedit,*[5] and various facts of local interest are mentioned. The existence of alien monasteries in England (the lands of which Edward III., like some of his successors, seized into his own hand) is reflected in some of the proceedings.[6] Some quaint old customs are alleged to have been in existence, as for instance that one who was able to reckon up to twelve pence and measure an ell of cloth was in some places considered of an age to aliene land.[7] The frequent claims of cognisance of pleas show the wide diffusion of private jurisdictions. A writ of *Secta ad Molendinum* brings out the fact that the toli paid for grinding corn was one measure in ten.[8] For a careful observer, indeed, there are innumerable side lights thrown upon the life of the period, and this will appear in a still more remarkable degree in reports as yet unpublished.

The Counsel whose names ap-

Among the Counsel whose names appear in this and the preceding volume there is one whose name has

[1] No. 22 in Easter Term.

[2] No. 20 in Easter Term.

[3] No. 24 in Easter Term.

[4] No. 52 in Easter Term.

[5] See especially No. 17 in Michaelmas Term, and Nos. 1 and 21 in Trinity Term.

[6] Nos. 20 and 55 in Trinity Term.

[7] No. 28 in Easter Term.

[8] No. 27 in Hilary Term (Second Report).

pear in the Reports.

been given in the translation with some diffidence. It usually appears in the MSS. as *Trew.* This was extended into *Trewith* by Mr. Horwood, and the name is so written once in one of the MSS. It once appears as *Trewodes* in a MS.; and whatever the name may have been there can hardly be a doubt that the person was the *Simon de Trewythosa* mentioned by Dugdale [1] as one of the *Attornati Regis,* and one of the *Servientes ad legem.* His name occurs in other passages among the *Liberate* Rolls [2] besides those mentioned by Dugdale, usually but not always as "*Simon de Trewythosa.*" He must have died during the year 1339, in which year a payment for his services in Michaelmas Term, 1338, was made to his executors. In the entry relating to that matter his name is given as *Simon de Trewosa.*[3] The name of the person is, without doubt, taken from that of a place, which may, from its composition, have been either Welsh or Cornish, but was most probably Cornish. There are in Cornwall many hamlets of which the present designation might with good show of probability be identified with a past designation presenting so many phases as Trewythosa, Trewosa, Trewodes, and Trewith. The difficulty is not to find an approximate agreement, but to select one instance of approximate agreement out of many. The point, however, is of very little importance in itself, and of no importance at all in relation to any period subsequent to that included in the present volume. Trewith (if so he was called) disappears after Trinity Term in the thirteenth year, and the payment made to his executors establishes the fact that Derworth, who comes into prominence almost immediately afterwards, is not, as might perhaps have been suspected, the same person with another variation of his multiform name. As, therefore, the word *Trewith* serves to indi-

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[1] *Origines Juridiciales* (*Chronica Series*), 43.

[2] *Liberate Roll* (Chancery), 12 Edw. III., m. 4.

[3] *Liberate Roll*, 13 Edw. III.

cate the man, and as it was so printed in the previous volume, I have retained it for the sake of uniformity.

Both *Trewith* and *Parning* were King's Serjeants, and it is not difficult to perceive that they were among the most skilful of the counsel of their day. Parning was destined to rise much higher, for within a year from the time of the last case in this volume he became Chief Justice of the King's Bench, and shortly afterwards Chancellor. Wodestoke became a Justice of the Common Pleas in the fourteenth year of the reign, and Kelshulle in the fifteenth. Stouford was a King's Serjeant in the fourteenth year, and Chief Baron of the Exchequer in the nineteenth year of the reign.

The Judges.

Some details concerning the Judges whose names appear in the reports now published have already been given in the preface to the volume of Year-Books 11–12 Edward III. A table is appended to this Introduction (p. cxxxvii) showing the constitution of the Courts of King's Bench and Common Pleas, as well as the name of the Chancellor during the period included in the present volume.

Extraordinary respect for Herle, the retired Chief Justice of the Common Pleas.

There is, however, mentioned several times in these pages, as having had an important influence in deciding difficult points, a Judge whose name will, nevertheless, not be found in the table. This is the famous Sir William Herle, whose reputation had greatly impressed both Littleton and Coke,[1] and who seems to have been unanimously regarded by his contemporaries as by far the greatest lawyer of his age.

Herle was a member of the Council which at this time exercised a control or supervision over the courts, and decided various questions of law arising during the progress of an action.[2] He had, at his own request, been relieved, a few years previously, of the cares of the Chief Justiceship of the Court of Common Pleas, as his health was broken down, "laboribus, senioque." The

[1] Co. Litt., 71.

[2] See above, pp. xcii–cxi.

King, however, could not entirely dispense with his services, and his resignation was accepted "ita tamen "quod de secreto nostro Concilio moremini, et ad "Parliamenta et Concilia nostra ad summonitionem "nostram inter alios Justiciarios regni nostri, cessante "impedimento, veniatis."

In the instrument in which this appears[1] there appears also a sketch of Herle's character:—"Probata fidelitas, "circumspectionis soliditas, et morum gravitas ordinata, "quibus vos Virtutum Dominus clarius insignivit." It is clear from several passages in the Year-Books that these words do not at all exaggerate the estimation in which he was held. Such an expression as "Herle, and all the "most learned of the Council,"[2] almost implies that the opinion of the whole Council, if in opposition to that of Herle, would be but of little value. His moral worth, his intellectual power, and his knowledge of the law alike gave men confidence that he, above all others, could be trusted

δίκην ἰθύνταται εἰπεῖν.

I have again the pleasure of expressing my best thanks to the Benchers of the Honourable Societies of the Inner Temple and Lincoln's Inn for the loan of their most valuable MSS. of the Year-Books, and to the Benchers of the former Inn for the use of Mr. Serjeant Manning's transcript and translation of the Temple MS.

It would have been difficult to overrate the advantage of having the use of a translation made by so eminent a legal authority had that translation been made from the text as it now appears. Wherever it covers the same ground it has been carefully collated with the translation now printed as the sheets were

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[1] *Patent Roll*, 9 Edw. III., part 2, m. 31.

[2] Below, p. 298.

passed through the press. Mr. Serjeant Manning's translation, however, is a translation of the Temple MS. alone, and there are consequently but few pages in it which have not the letter "q" in the margin; many have queries in several places. It has been a great satisfaction to find that most of his suggested doubts and difficulties have now been removed by references to the records, by readings in other MSS., by comparison with different reports of the same cases, or otherwise. Opposite one report (No. 9 in Easter Term) Mr. Serjeant Manning, with a frankness not less admirable than his legal skill and his grasp of the ancient law, has written in pencil the following note:—"I cannot understand this case, "partly, perhaps, because it is not clearly reported; "but probably it is more owing to my not being "acquainted with the nature of the subjects in con-"tention." The case is very remarkable in many ways, and, it may be hoped, has been rendered more intelligible by collation of the various MSS., and comparison with the record, which, however, was not discovered until the report had been printed. Some further remarks upon the subject will be found in this Introduction.[1]

Mr. Serjeant Manning has made clear and concise abstracts of many of the more important cases which occur in the Temple MS., and, wherever they have been found to be in accordance with the text and translation as printed, they have been incorporated in the Index.

It should also be mentioned that I have become the owner of the various papers relating to the Year-Books left in an unfinished state by Mr. Horwood, and have made such use of them as it was possible to make of uncollated transcripts from a single MS. He transcribed the Reports of Michaelmas Term in the 12th year from the additional MS. No. 16560 in the British

[1] Above, pp. lxxxv–xci.

Museum, and of the other terms included in the present volume from the Temple MS. His translations, though they appear to have been independently made, agree in the main, sometimes word for word, with those of Mr. Serjeant Manning, and (except those of Michaelmas Term in the 12th year, which were left in a very imperfect condition) are, like Mr. Serjeant Manning's, applicable only to the Temple MS., and not to the text as it now stands, for which and for the printed translation I must accept the full responsibility. I can only hope that the mistakes which may be detected will be regarded with indulgence, as being almost inevitable in the execution of a most difficult and laborious task. At the same time I may say with confidence that the plan which I have adopted, and explained at the beginning of this Introduction, has furnished the means of checking the work again and again, and so diminished the chances of error.

L. Owen Pike.

December 31st, 1884.

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[2] See Introduction, p. lxxxvii (note.)

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Chancellor and Keeper of the Great Seal:

Richard de Bynteworth, Bishop of London.

Justices of the Court of King's Bench:[1]

Sir Richard de Willoughby, Chief Justice.
Sir Thomas Bacon.[2]
Sir Robert de Scardeburgh.
Sir Robert Brundish.
Sir William Faunt.
Sir William Scot.[3]

Justices of the Court of Common Pleas:[4]

Sir John de Stonore, Chief Justice.
Sir William de Shareshulle.[5]
Sir John Inge.
Sir John de Shardelowe.[5]
Sir Richard de Aldeburgh.
Sir Roger Hillary.
Sir William Scot.[6]
Sir William Basset.

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[1] In order of seniority.

[2] Possibly until 2 May 1339.

[3] Transferred from the Court of Common Pleas, 2 May 1339.

[4] In the order in which the names appear in the "Feet of Fines."

[5] The letter c is uniformly inserted after the initial S of this name in the MSS. of the Year-Books, but uniformly omitted in the records.

[6] Until transferred to the Court of King's Bench, 2 May 1339.

CORRECTIONS AND ADDITIONS.

Page 30, lines 5, 7, and 12, *for* the word "to," by which the French "a" has been translated, it might, perhaps, be permissible to substitute the words "in the person of," as the use of "a" in the sense of *au moyen de* supplies an analogy. The inexactness of describing a presentation as being to a clerk, instead of to a church, would thus be avoided.

,, 44, line 36 } *for* Sadelyngslanes *read* Sadelyngstanes.
,, 45 ,, 34 }

,, 47 ,, 23, *for* afferendum *read* differendum.

,, 49 ,, 33, *for* tailter *read* taliter.

,, 88 ,, 18, *for* wheeefore *read* wherefore.

,, 98 ,, 17, *for* Cartæ *read* Chartæ.

,, 100 ,, 9, after the word "law" *insert* a semicolon.

,, 202 ,, 1, *for* defendant *read* defendant's uncle.

,, ,, ,, 3, *after* sufficient *insert* for the plaintiff.

,, 213 ,, 22, *for* pui *read* puis.

,, 239, opposite line 30, *insert in the margin* [Fitz. *Briefe*, 260].

,, 266, line 28, *for* whent he *read* when the.

,, 294, opposite line 10, *insert in the margin* [Fitz. *Damage*, 96].

,, 389, second column, line 8, *for* 168–178 *read* 168–170.

MICHAELMAS TERM

IN THE

TWELFTH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

10591. Wt. 19872. A

MICHAELMAS TERM IN THE TWELFTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

A.D. 1338.
Essoin.

(1.) § An essoin was cast against one A. a guardian. "Guardian" was not expressed in the writ; exception was taken to the essoin, and it was amended by judgment. (But it is different in the case of any other essoin which is common.)

Debt: Essoin on the King's service.

(2.) § Upon a writ of Debt, after law was waged the defendant was essoined as being on the King's service, and then made default and failed of his law and his warrant; and judgment was given and damages were awarded according to what the party had counted; and there was no punishment for the default of the warrant. — This was strange. —And it was said by THE JUSTICE that upon a writ of Trespass one recovers damages according to his count by non-defence, and, if the other plead upon the same writ to the country against him, they will be taxed.

Account.

(3.) § Note, that where a writ of Account was brought in the country in one county against A., and another writ of Account was brought against the same A. in another county, the defendant appeared to one writ by which he was attached, and the sheriff had returned to the other writ *non est inventus;* and, notwithstanding, the defendant appeared, and said that he was the same person and prayed that the plaintiff might count against him. The plaintiff's attorney said that he could not recognise

DE TERMINO MICHAELIS ANNO REGNI REGIS EDWARDI TERTII POST CONQUESTUM DUODECIMO.[1]

(1.) § Un essone fuit gette vers un A. gardein. Le bref ne voleit mye gardeyn; lessone chalange et amende par jugement. (*Sed aliud est* de altre essone de comune.)[2]

A.D. 1338. Essone. [Fitzherbert's Abridgment: *Amendment*, 61.]

(2.) § En un bref de dette apres la lei gage le defendaunt fuit essone de service le Roy, et puis fit defaute, et failli de sa lei et de soun garrant, et jugement fuit rendu et damages agardez solom ceo qe partie avoit counte, et nul punisment pur la defaute de garrant. *Mirum.*—Et, par JUSTICE, En bref de trespas il recoveri damages com il ad counte par noun defense, et si lautre plede par mesme le bref al pais vers luy serront taxes, &c.

Dette: Essone de service le Roy. [Fitz. *Condempnacion*, 19.]

(3.) § Nota qen bref dacompte porte en pais en un counte vers A., et autre bref dacomte porte vers mesme celuy en altre counte, [a un bref per quel il fut attache le defendant vient, et al autre bref vicounte avoit retourne][3] *quod non fuit inventus;* et *non obstante,* le defendant apparust et dit qil fuit mesme le persone et pria qe le pleyntif counta devers luy; lattourne le pleyntif dit qil ne put conustre [la persone][3] le de-

Accompte. [Fitz. *Respond*, 82.]

[1] The Reports of this term are from the Additional MSS. in the British Museum numbered 16560 and 25184.

[2] 25184, Est dautre qe de commune essone.

[3] The words between brackets are not in 16560. See *post* No. 7.

A.D. 1338. the person of the defendant since the return to the writ was *non est inventus.* — THE COURT. If only one writ of Account had been brought and the sheriff had returned *non est inventus*, although the defendant wished to appear he would not be received; but here, when the attorney has counted against the defendant upon the other writ, he can know that it is the same person against whom he counted at first.—Wherefore the plaintiff was put to count against him &c. And so &c.

Certificate. (4.) § A mandate issued from the Common Bench to the Bishop of Lincoln to certify on a certain point; and because the Bishop was out of the country his officer certified. And because the Court was not satisfied that the Bishop was out of the country the certificate of the officer was not received.—SCHARSHULLE. First sue a writ to certify us that the Bishop is out of the country.

Waste. (5.) § Upon a writ of Waste a writ issued to the sheriff to inquire of the waste, to which he returned that he directed the bailiff of the liberty &c. And the sheriff was amerced, and the office was entrusted to the sheriff that he himself should make &c.

Assise of Novel Disseisin. (6.) § In an assise of Novel Disseisin a deed was denied; and the witnesses were named, and process was made against them; and one of them, who was named in the deed, was under age; and notwithstanding this he was sworn like any other. And yet he was tenant by purchase since the disseisin. — And note that he

fendaunt puis qe le bref fut retourne *quod non fuit inventus.*—CURIA. Sil nust[1] mes un bref dacompte porte, et[2] le vicounte retourna[3] *non est inventus,* mes qe le defendant voleit apparer il ne serra mie resceu; mes ici, quant attourne ad counte vers le defendant en lautre bref, il puit conustre qe cest mesme la persone vers qi il counta primes.—Par quei il fuit mys a counter devers luy &c.—*Et sic, &c.* A.D 1338.

(4.)[4] § Maunde fuit hors de Comune Bank[5] al Esvesqe de Nichole de certifier sur un certeyn poynt; et pur ceo qe Lesvesqe est hors de terre soun officer certifia.—*Et quia non constat Curiæ* qe Levesqe fuit hors de terre la certificacion lofficer ne fuit mie resceu.—SCH. Siwez primes bref de nous asserter[6] qe Levesqe est hors de terre. Certificacion. [Fitz. *Certificat,* 5.]

(5.) § En un bref de Wast bref issit a vicounte denquere de wast, ou il retourna *quod mandavit ballivo libertatis* &c. Et le vicounte fuit amercie, et loffice comande a vescount qil fait mesme[7] &c. Wast. [Fitz. *Retourne del Vicount,* 92.]

(6.) § En un assise de novele disseisine un fait fuit dedyt; et[8] testmoignaunts nomes, et proces fuit fait vers eux; et un de eux qe fuit nome en le fet fuit denz age,[9] et *hoc non obstante* il fut jure com un autre. Et unqore il fuit tenant par purchace puis la disseisine.[1] — *Et nota* qe celuy qe demist pendaunt Assisa Novæ Disseisinæ. [12 Liber Assisarum 11,41; Fitz. *Proses,* 29.]

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[1] 16560, myst.

[2] 25184, par.

[3] The word retourna is not in 25184.

[4] Repeated in nearly the same form, Easter, 13 Edw. 3, No. 14.

[5] 16560, Place.

[6] 16560, a sercher.

[7] 25184, qil ne fait mesmes.

[8] 16560, en.

[9] 25184, deinz age et nome en lassise, instead of nome en le fet fuit denz age. Neither in the *Liber Assisarum* nor in Fitzherbert is the infancy mentioned. The two reports in the *Li. Ass.* differ *inter se,* and from the report in the text, and the whole passage is obscure.

[10] 25184, purchase.

A.D. 1338. who devested himself, while the writ was pending, pleaded in bar, and exception was taken on the ground that he had devested himself while the writ was pending; and notwithstanding this, because he was in law tenant, the plaintiff was put to answer, and denied the deed, as above.

Account. (7.) § John de Rivers, parson of the church of Hambury, brought a writ of Account in the county of Stafford against H. de Bertham, for that the latter was his receiver, &c., and another writ of Account in the county of Wilts, by the name of John de Rivers, without the addition of "parson;" and the sheriff of Stafford had taken the defendant and sent him to York; and he came in the custody of the sheriff and pleaded. And the other writ was returned *non est inventus;* and he proffered himself to plead; and the other said that he did not know whether this was the same H. or another. And, because the same person was attorney as well in respect of this writ as in respect of the other upon which he had counted against the defendant, he was put to count; and he said that the defendant received certain moneys by divers hands &c. And the defendant said that the plaintiff made him bailiff for the latter of the parsonage of Hambury, without requiring him to render an account, and did so by a deed which he had put forward; and what the plaintiff assigned that he received was partly from the altarage and partly from the sale of the corn of the parsonage aforesaid; thus H. received in the capacity of bailiff, as above, and not in any other manner.—*Stouford,* for the plaintiff, would have averred his writ without having replied that it was in another manner.—And the COURT said that he ought to reply that it was in a different manner from that which the defendant had admitted &c.—And then because the warrant of the plaintiff's attorney was against "H. de Bertham" both upon the one writ and

bref [pleda en barre, et ceo chalange qe fuist dimist pendaunt le bref][1]; et *hoc non obstante*, pur ceo qe fut tenant en lei, le pleyntif fut mys a respondere, et dedit le fait *ut supra*. A.D. 1338. [Fitz. *Assise*, 115.]

(7.)[2] § Johan de Rivers persone del eglise de Hambure porta un bref dacompte vers H. de Bertham en le counte de Stafford de ceo qil fut son resceivour &c., et un autre bref dacompte en le counte de Wyltes par noun Johan de Rivers saunz persone, et le vicounte de Stafford ly avoit pris et mande a Everwik; et il vient en garde de vicounte et pleda. Et lautre bref fuit retourne *Quod non est inventus;* et il se profrit a pleder; et lautre dit qil ne savoit le quel il fuit celuy H. ou autre. Et pur ceo qil fut attourne auxi bien en ceo bref com en lautre en quiel il avoit counte vers ly, il fuit mys a compter: qe dit qil resceu [certeyn deners par divers meyns &c. Et le defendant dit qil ly fit son baillif de personage de H. et saunz acompt render, et par fait qil ad mys avant; et ceo qil assigna qil resceu][1] ceo fuit en partie de lauterage et en partie de vente des blees del personage avandit; issint resceu H.[3] com bailif *ut supra* et nent en autre manere. — *Stouff.* pur le pleyntif, voleit aver averre soun bref saunz aver replie qe en autre manere.—Et la Court dit qil devereit replier qe en autre manere qil navoit conu &c.—Et puis pur ceo qe la garrant del attourne le pleyntif fuit vers H. de Bertham en Acompte. [Fitz. *Variauns*, 79.]

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[1] The words between brackets are not in 25184.

[2] See *ante* No. 3.

[3] A. in both MSS.

A.D. 1338. upon the other, and the writs designated "H. Bertham," omitting the "de," the defendant went *sine die* &c.

Trespass. (8.) § Upon a writ of Trespass, relating to beasts taken with force and arms and detained until a fine of 60*s.* was paid, *Parning* avowed the taking of the beasts for *damage feasant,* and as to the fine said that he did not take it.—*Trewith.* This answer is double, that is to say, on the taking of the beasts, and on the fine.—*Parning.* The answer is on the taking of the beasts; and what I plead about not taking the fine is a protestation to save me from damages for the time they were detained. —SCHARSHULLE, *ad idem,* The taking of the beasts is the principal matter, and if it be found rightful, he is excused as to taking the fine, for it was congeable to take the fine.—*Parning* said the same.—*Trewith.* It is congeable to take amends, but not to take a fine which sounds in the will of the taker.—SCHARSHULLE. Issue may be taken wholly on the fine, as by saying, You detained the beasts until a fine was paid, ready &c.—SCHARDELOWE. Then they would depart from the writ, in which the taking of the beasts is the principal matter.—*Parning* said (as before) that the issue on the fine which was congeable in law should not be taken.—SCHARSHULLE. Upon a writ of False Imprisonment until a fine has been paid issue will be taken on the imprisonment and on the fine.—*Parning.* The case is not similar; in that case neither is congeable as in this.—*Trewith.* Let us suppose that we have common there, and that it be so found, will the defendant be punishable for taking the fine without inquiring thereof?—And the COURT was of opinion that he would be, just as in a plea concerning the taking of cattle the issue will be only on the taking, and by the fact of the taking being found without just cause the detention is punishable.—*Parning.* Yes truly,

lun bref et en lautre, et les brefs volerent H. Bertham, entrelessaunt le "de," il ala saunz jour &c. A.D. 1338.

(8.) § En un bref de trespas des bestes pris a force et armes et detenuz tanqe fyn fuit fait de lx.[1] souz, *Parn.* avowa la prise pur damage fesaunt, et quant a la fyn il ne prist pas. — *Trew.* Ceo respouns est double, saver sur la prise et sur la fyn.—*Parn.* Le respouns[2] est sur la prise, et ceo qe jeo plede saunz fyn prendre est protestacion de sauver moi de damages pur le tens detenus.[3]—SCH., *ad idem,* La prise est le principale, et si ele soyt trove draiturele, quant a la fyn prendre il est excuse, qar coungeable est de prendre la fyn. — *Idem dixit Parn.* — *Trew.* Coungeable est de prendre amendes, et nient fyn, qar fyn soune en la volunte le pernour.—SCH. Homme puit prendre lissue tut sur la fyn, com a dire vous detenistez les bestes tanqe fyn fuit fet, prest &c. — SCHARD. Donqes departirent il du bref dount le principale est la prise.—*Parn. dixit ut prius* qe lissue sur[4] la fyn qest congeable en lei ne serra mie prise.—SCH. En bref de faux emprisonement tanqe fin fuit fet issu serra pris sur lenprisonement et sur la fyn. — *Parn. Non est simile;* ne lun ne lautre nest coungeable *sic-[ut] hic.*[5] — *Trew.* Mettoms[6] qe nous eioms illoeqes comune, et ceo soyt trove, serra le defendaunt atteynt de la fyn prendre saunz enquere de ceo?—*Et apparuit per* CURIAM *quod sic,* come en prise des avers issue serra soule sur la prise, et par la prise trove fauxe le detenue est atteynt.—*Parn.* Oil verement, si Trespas.

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[1] 25184, xl.

[2] 25184, la resoun.

[3] 25184, de salver a moi accion les damages pur mesmes les tenements, instead of de sauver moi de damages pur le tens detenus.

[4] 16560, par.

[5] 25184, *sic hic;* 16560 *secus hic,* deleted.

[6] 16560, Mettez.

A.D. 1338. if on taxation by the Inquest it be found by reason of the tortious taking, without inquiring expressly of the fine &c.—Again on the morrow SCHARSHULLE[1] said, When a writ comprises a beginning of a tort which is relative to the fine, as in this case, the fine being made by way of taking ransom, then the ransom by means of the fine is the principal tort; and now when his writ supposes the taking to be for the sake of the ransom, and you avow the taking for another cause, and deny the fine, it is a good replication for the plaintiff to say: —You took them with force and arms and detained them until you took a fine, (ready &c.), and not for any other cause.—*Parning.* He did not come into Court to aver a thing which is admitted, and here the defendant has admitted the taking.—*Trewith* offered to aver as SCHARSHULLE last suggested.—*Parning.* Then I demand judgment at my peril, since he does not deny the taking to have been on my soil, *damage feasant,* in which case it was lawful for us to take a fine; judgment how we ought to depart.—And the other JUSTICES said that the COURT would hold the issue on the taking good.—And the opinion was frequently expressed by SCHARSHULLE that, even if the taking of the beasts was made in a several, because the fine was taken afterwards, which was a tort, that enabled the plaintiff to maintain his writ at all times.—One asked *Parning,* If it were found that the taking of the beasts was rightful, ought not inquiry to be made concerning the fine?—*Parning.* Certainly not; for the law requires a fine for such a trespass; wherefore it would be impossible to take against the peace a thing the taking of which is congeable.—SCHARSHULLE. Yes, amends, but not a fine. —*Parning.* Let him acknowledge the taking of the beasts to have been for the cause which I have stated

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[1] The insertion of Scharshulle's name here seems to be required by the context.

sur taxacion del enquest trove soit[1] par la prise tortinouse[2] saunz enquere par parol de la fyn &c. —*Item in crastino,* Quant bref comprent un comencement dun tort qest relatif a la fyn, com est ici, la fyn fait en[3] raunsoun prendre, dunqes est le raunsoun a[4] la fyn principal tort; et ore quant soun bref suppose la prise par cause de raunsoun, et vous avowez la prise par autre cause, et dedites la fyn, il est bon replicacion pur le pleyntif, vous les pristes a force et armes et les detenistes tanqe vous pristes fyn, prest, et ne mye par autre cause. — *Parn.* Il nestut pas daverer chos conuz, et sil conust la prise. —*Trew.* tende daverer com SCH. dyt ore a derreyn.— *Parn.* Donqes jeo demande jugement a moun peril, puis qil ne dedit[5] la prise en mon soille damage fesaunt ou list a nous de fyn prendre; jugement com nous devoms departir.—*Et alii* JUSTICIARII *dixerunt* qe la COURT tendra lissue bon par la prise.—*Et apparuit sæpe per* SCH. qe, mesqe la prise fuit fait en several, pur ceo qe fyn fuit pris apres, qest tort, ceo donne al pleyntif de meyntenir soun bref en tout temps. Un demanda de *Parn.*, si homme trovast qe la prise fuit dreiturel, ne devereit homme pas enquere de la fyn? —*Parn.* Noun certes, qar ley demande fyn pur tiel trepas, par quei il serroit imposible de prendere countre la pees chos coungeable. — SCH. Oil, amendez et nent fyn.—*Parn.* Conusse il la prise par cause com jai dit

A.D. 1338.

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[1] The words trove soit are not in 16560.

[2] In 16560 pris is inserted between tortinouse and saunz.

[3] 16560, ou.

[4] 16560, et.

[5] 25184, qil dit.

A.D. 1338. and justified, and I will at my peril acknowledge the fine, and we will abide judgment.—SCHARSHULLE. It is not proper to acknowledge it in the way you say, for he offers to aver that the taking was for the purpose of having the fine.—*Parning.* The practice of this Court has been that when one justifies a taking by the cause of the taking the issue is on the cause.—What he said is true &c.—And then the COURT said to *Trewith* that issue should not be on the taking of the beasts, for it was admitted.—*Trewith.* Sir, we make protestation that we do not admit that it was the defendant's several; and we say as to the beasts, the taking whereof he has acknowledged, that he detained them until the plaintiff paid a fine, ready &c.—[*Parning.*][1] Do you intend that for your answer?—*Trewith.* Yes.—Then *Parning* said, We did not take any fine, ready &c.—And so to the country &c.

Cui in vita.

(9.) § A woman brought a *Cui in vita* against G. and his wife, and demanded land and rent, and made her title in the writ from the gift of one Richard, "into which the tenant had not entry but by S. to whom the woman's husband demised them &c." As to part of the land, the wife, who was received by the default of her husband, vouched &c.; and as to part of the rent in respect of which she said the demandant demanded both the land and the rent issuing out of the same land, she prayed judgment of the writ. And it was adjudged that this plea lay in her mouth, notwithstanding that she was received. And the demandant said that it was not so issuing, without saying from what other land. And as to other parcel of the rent she answered as tenant of the land and said that one Richard leased it for term of life to one Isabel, who was to render a certain rent agreeing in quantity with that which was demanded; and, after the death of Richard, Isabel also died; after whose death Edmund, the son of Richard, and husband

[1] The insertion of this name seems to be required here.

et justifie, et a moun peril jeo conustra la fyn et demoreroms en jugement.—SCH. Il ne covient mie de ceo conustre come vous ditez, qar il tende daverer la prise pur fyn prendre.—*Parn.* Usage de ceste place ad este quant homme justifie prise par cause de prendre, issue sur cause.—*Verum dixit &c.*—Et puis la COURT dit a *Trew.* qe sur la prise issue ne serra ia pris, qar ele est conue.—*Trew.* Sire, nous fesoms protestacion qe nous ne conussoms mye qe ceo fuit son several; et dioms qe les bestes des queux il ad conu la prise il les detient tanqe qil fit fyn, prest &c. [Voillez ceo pur respouns?—*Trew.* Oil.—Puis *Parn.* Nous ne prismes nul fin, prest &c.][1]—*Et sic ad patriam &c.* A.D. 1338.

(9.) § Une femme porta un *Cui in vita* vers G.[2] et sa femme et demanda terre et rente, et fit soun title en le bref del doun un Richard, en les queux il navoit entre si noun par S. a qi le baroun la femme ceo[3] lessa &c. Quaunt a partie de la terre la femme qe fut resceu par la defaute soun baroun voucha &c.; et quaunt a partie de la rente dount ele demanda la terre et la rente issaunt de mesme la terre, et demanda jugement du bref. Et agarde fuit qe ceo plee gist en sa bouche *non obstante* qe ele fut resceu. Et le demandant dyt qe noun saunz dire en quele autre terre. Et quaunt a autre parcelle de la rente ele respoundi com tenant de la terre [et dit qun Richard ceo lessa][1] a un Isabele a terme de vie rendant un certeyn rente acordaunt a la quantite [demande],[1] et apres la mort Richard et Isabele[4] morereit, apres qi mort Edmund[5] fitz Richard et baroun la demandante

Cui in vita. [Fitz. *Briefe*, 257.]

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[1] The words between brackets are not in 16560.

[2] 16560, Benet.

[3] 16560, se.

[4] 16560, Alice.

[5] 16560, Esmond.

A.D. 1338. of the demandant, entered as upon his reversion, and leased for term of life to another who was to render so much rent, and then granted the reversion to Simon, who granted to her husband and her (the tenants) &c. And "we demand judgment whether for a rent thus extin-"guished she ought to have an action." And as to another parcel of the rent she pleaded the same plea save that she supposed that another was tenant of that land from which that parcel of the rent was to arise, and that she received the rent reserved by Edmund's lease after Richard's death.—Wherefore *Stouford* said, for the demandant, that her right to the reversion of the last-mentioned parcel proved that she was never tenant of the rent which Richard gave, but of another, nor tenant of the land, except in reversion; wherefore she who was demandant wished to aver that the other was tenant and deforciant; and she could not be received thereto because the tenant had pleaded to extinguish the rent, which Richard had, by the death of the tenant for term of life.—And so *Quære.*—And at last the demandant said with respect to the whole that Richard had a fee in the rent; ready &c.—And the other side said that he had only a term *pur auter vie*, as above.—And so to the country &c.—And so note, that the tenant pleaded to extinguish the rent without the gift made by Richard, as the writ supposed, having been shown; for, whether he gave or not, if Richard had no other estate, by the death of the tenant the rent was extinguished. And this was often said and allowed.

Assise of Novel Disseisin.

(10.) § One John brought an assise for tenements which were within the franchise of the Dean and Chapter of York; and the franchise was claimed; and they showed forth a charter that they should have the cognisance of all pleas touching the Dean and Chapter and their men both in the one Bench and in the other, except pleas of the Crown, as they had before the

entra come en sa reversioun, et lessa a un autre a terme de vie, rendant tant de rente, et puis granta la reversion a Simond, et le qiel granta a soun baroun et a luy &c. Et demandoms jugement si de cel rente issint esteint deyve accion avoir. Et quaunt a un altre parcelle de la rente ele plede mesme le plee, salve qele suppose qautre fut tenaunt de cele terre de quele cel parcelle de rent duist estre sourdaunte, et qele resceut la rente reserve par le lees Edmund[1] puis la mort Richard.—Parquei *Stouff.* dit pur le demandant qe soun reversion en dreit de la dreyn parcelle prova qele ne fut mye tenant de la rente qe Richard dona, eynz dautre, ne tenant de la terre fors quen reversion; par quei ele qe fut demandant voleit averer qele fut tenant et deforceour; et ne puit estre resceu pur ceo qe le tenant avoit plede a esteyndre la rente qe Richard avoit par la mort le tenant a terme de vie.—*Et ideo quære.*—Et a derreyn le demandant dit quaunt a tut qe Richard avoit fee en la rente; prest &c. Et lautre dit qil avoit qa terme dautre vie *ut supra.—Et sic ad patriam &c.—Et sic nota* qe le tenaunt pleda a esteindre la rente sanz moustrer le doun fet par Richard com le bref supposa, qar lequel il dona ou non, [si][2] Richard navoit autre estat, par la mort le tenaunt il fut esteint. *Et hoc sæpe dictum fuit et concessum.* A.D. 1338.

(10.) § Un Johan[3] porta un assise des tenementz qe furent denz la fraunchise le Dean et le Chapitre Deverwyk; et la fraunchise fuit demande; et mustrent avaunt[4] chartre qe en toutz plees tochauns le Dean et le Chapitre et lour hommes en lun Baunk et lautre, forspris plees de la Coroune, qils averount la conis- Assisa Novæ Disseisinæ. [12 Li. Ass. 35; Fitz. *Conisans*, 81.]

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[1] 16560, Esmond.
[2] si is from Fitz.
[3] 25184, homme.
[4] avaunt is not in 16560.

A.D. 1338. coming of the Bench.—Upon this *Trewith* said, for the King, that a plea of assise was not a plea of one Bench or of the other, unless the Bench were in the particular place; and the franchise was granted as it was before the coming, as above; and then it was not allowable, nor consequently now; and moreover, it speaks of them and their men, who can only be understood to be villeins &c. — SCHARSHULLE said that the words "their "men" were inserted by the Council, and can not be understood as referring to villeins but to those who are tenants and become "their men" by doing homage.—*Quære* to those who do fealty?—*Parning* said the contrary, and so did *Trewith*.—*Quære* &c.—SCHARSHULLE and HILLARY said if the King take a man into protection, and his men in general terms, villeins are not within the protection, but only tenants.—And the franchise was heretofore allowed; and in like manner now also; and so &c.

Per quæ servitia.

(11.) § A man sued a *Per quæ servitia* against the Archbishop of York, who disclaimed holding of the cognisor; and he was not received thereto, because the other could not have the advantage, to wit, of recovering the demesne by a writ of Right. And he said that he did not hold of the cognisor on the day &c.—And the other side said the contrary.

Trespass.

(12.) § William de Roos, of Hamelak, complained of his turves dug in Wildemore to the value of 100*l.* in cuttings and pieces; and the defendant said that Wildemore is neither a vill nor a hamlet, and demanded judgment of the writ. And the plaintiff was driven to maintain his writ; and he said at first that part is in a vill, but that the place where the trespass was committed is

saunce *sicut habuerunt ante adventum*[1] *Banci;* ou *Trew.* dit pur le Roi qe plee dassise ne fuit mie plee de lun Baunk ne del autre si le Baunk ne soyt ici; et la fraunchise est graunte *secundum* [*quod fuit ante*][2] *adventum, ut supra;* et adonqes [nent grantable, ne *per consequens* ore; et estre ceo il parle deux et lour hommes qe ne pount estre entenduz mesqe vileyns &c.—SCH. dit qe par le counseille fut cel parol de lour hommes, qe ne pount estre entenduz des vileyns mes de ceux qe sount tenauntz qe devieignent][3] hommes en fesaunt homage.—*Quære* de ceux qe fount feaute.—*Parn.* dit le contraire, et *Trew.*[4] auxint. *Quære* &c. —SCH. et HILLARY disoient qe si le Roi preigne un homme en sa proteccion et generalment[5] hommes, qe les vileyns ne sount pas en la proteccion, nient plus qe tenantz.—Et la fraunchise fuit autre foitch alowe; et *similiter* auxi; *et sic* &c. A.D. 1338.

(11.) Un homme siwist un *Per quæ servitia* vers Lercevesqe Deverwik quel[6] desclama a tenere del conussour, et ne fuit pas resceu, pur ceo qe lautre ne pount aver lavauntage, saver a recoverir le demene par bref de dreit.—Et dit qil ne tient poynt del conussour jour &c.—*Et alii e contra.* Per quæ servitia.

(12.) § William de Roos de Hamelak se pleynt de ses tourbes fouwes en Wildemore a la value de C. livres de trenches et de pesses;[7] et le defendaunt dit qe Wildemore nest ville ne hamelle, et demanda jugement du bref. Et le pleyntif fuit chace a meyntenir soun bref; et dit a comencer qe partie est en ville, mes le lieu Trespas.

[1] 25184, *haberent ad motum,* instead of *habuerunt ante adventum.*

[2] The words *quod fuit ante* have been supplied from the *Li. Ass.*

[3] For the passage between brackets, which is in 16560, there is substituted in 25184 the following:—et issint nient grantable ne *per consequens* ore; estre ceo il parle de eux et de lour hommes et ne put estre entendu estre des vileyns mes de ceux qe sont tenauntz qe demoergent.

[4] 16560, *Trewodes.*

[5] MSS. g.

[6] 16560, qil.

[7] 25184, en meme pieces instead of et de pesses.

A.D. 1338. out of the vill. Because he had admitted that part of Wyldemore was in a vill, and had not distinguished it by any addition from what was outside the vill, the COURT inclined to abate the writ. And then *Parning* instead of his previous pleading said simply that W. is not in a vill. And the other side said that it is in Conesby, which is a vill. And upon that issue was taken.

Challenge of a panel.

(13.) § The Array of a panel of an inquest between Sir William Tweng and Robert de Colewyne was challenged because the under-sheriff received robes of the other party; and the COURT did not hold this to be a challenge unless it was said that he was of the party's counsel. And then they said that the under-sheriff had robes and was of the counsel of the other party. And the other party said that the array was made by the bailiff of the fee, and not by the sheriff or his officers. And that was inquired of, without having regard to the fact that the sheriff had answered for himself, and it was found. Wherefore the JUSTICES would not inquire of the challenge by the other, as above. And then they challenged the Polls because the jurors indicted the party for a felony; and that was found &c., and the challenge allowed &c., by the JUSTICES.

Deceit.

(14.) § Upon a writ of Deceit the summoners and all the others were ready, whereupon the tenant said that they ought not to proceed to an examination, because the plaintiff in the plea aforesaid had caused himself to be essoined and had made an attorney after the essoin; wherefore it is to be understood that he was apprised &c. Wherefore *Trewith* said that although there was an attorney, yet that does not prove that the party had the summons; and the essoin might be the act of another, and a man might make an attorney in order to defeat

ou le trespas fuit fait est hors de ville. Pur ceo qil avoit conu qe partie de Wyldemore fuit en ville et navoit done nul diversite par adjeccion de ceo de hors, la COURT fuit en opinion davoir abatu le bref. Et puis *Parn.* pur cel plee dit simplement qe W.[1] nest pas en ville. Et lautre dit qen Conesby qest vile. Et sur ceo issue pris. A.D. 1338.

(13.) § Larraye de panelle dun enquest[2] entre Sire William Tweng[3] et Robert de Colewyne[4] fuit chalange [pur ceo qe le souz vicounte fuit de ses robes; et la COURT nel tient pas chalange][5] saunz avoir dit qil fuit de soun conseille. Et puis ils disoyent qe le south vicounte fuit a ses robes [et de soun counseil];[5] et lautre partie dit qe larrai fuit fait par baillif de fee et nient par le vicounte ne[6] par ses ministres; et cella enquis sanz aver regard a ceo qe le vicounte avoit respondu de luy mesme; celle trove. Par quei les JUSTICES ne voilleynt mye enquere de la chalange lautre *ut supra.* Puis ils chalangent le testes par cause qeux luy enditerunt par cause de felonie; et[7] cel trove &c. allowe &c. des JUSTICES. Chalange dun panel. [12 Li. Ass. 36; Fitz. *Challenge,* 114.]

(14.) § En un bref de desceit les somoners fuerent[8] pris et touz les autres, ou le tenant dit queux ne deivent pas aler al examinement, qar le pleyntif en le plee avandit se fit essoner et se fit attourne apres lessone,[9] par quei il est entendu qil fut apris &c. Par quei *Trew.* dit qe tut fuit il attourne ceo ne prove mie qil avoit somons, et lessone put estre autri fet, et un homme put faire un attourne a defaire le Deceite. [Fitz. *Disceit,*2.]

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[1] 16560, Wydenore.

[2] 16560, dun panelle ou dun quest.

[3] 16560, de T.

[4] 16560, B. de C.

[5] The words between brackets are not in 25184.

[6] 25184, mes.

[7] 25184, et ceo chalange trovee et allowe.

[8] MSS. la som. fut.

[9] MSS. def.; lessone is from Fitz.

A.D. 1338. the summons, and by the fact of his making an attorney the summons is not accepted.—SCHARSHULLE. If one be essoined, and then the *Cape* issues upon his default, he will deny the essoin because it is an intendment of law that the essoin proves the acceptance of the summons; and when a man makes an attorney, which is a fact of such high record that by no averment can it be defeated, it seems that thereby the summons is accepted. —ALDEBURGH said, When he had an attorney who might have been removed and was not removed, has he an action of Deceit &c.? And consequently no other action &c.

Trespass. (15.) § A man complained of his corn and his grass depastured on a certain day. The defendant said that he depastured the grass on another day, on which day it was his common, because the corn was cut and carried away; ready &c. And the plaintiff said that the corn was not carried away. And so to the country. But as to the corn the defendant said that he did not depasture it, &c. And so note that they admitted the depasturing on another day. And so, see.

Assise of Novel Disseisin. (16.) § A man by his guardian brought an Assise of Novel Disseisin, where the tenant said, by *Parning*, that the plaintiff was of full age on the day of the purchase of the writ, and he had answered against the plaintiff as to a man of full age; wherefore he prayed that the plaintiff might be viewed by the Court.—*Trewith* said that if he had a plea which would be binding against a man of full age only, such as his own deed, he ought to plead it, and then the Court would have a warrant for delay, but otherwise not; for, if they would, every infant under age would be delayed without a cause.—And to this the COURT assented. — Then the tenant alleged joint-tenancy of parcel with his wife. To which the plaintiff said that he had nothing on the day of the purchase of the writ &c. To which the other said that he could not

somons, par qi[1] fesaunce del attourne la somons nest pas accepte.—SCH. Si un soyt essone et puis le *Cape* issie par sa defaute, il defendra lessone pur ceo qe lei entend qe lessone prove lacceptance de la somons; et quaunt un homme fait un attourne, qest si haust de record qe par nul averement put estre defait, il semble qe par cella somons est accepte.—ALD. dit qe quaunt il avoit attourne qe put aver remue et ne fuit pas remue, ad il accion de desceite &c.? Et *per consequens* nautre accion[2] &c. A.D. 1338.

(15.) § Un homme se pleynt de ses blees pues et sa herbe a certeyn jour. Le defendant dit qil puit la herbe a autre jour, a quiel jour ceo fuit sa comune, pur ceo qe les blees furent sciez et emporte; prest[3] &c. Et le pleintif[4] dit qe les bles ne furent pas emportes. *Et sic ad patriam.* Mes quaunt a les blees le defendant dit qil ne puit pas &c. *Et sic nota* qils conissoient le pestre a autre jour. *Et sic vide.* Trespas.

(16.) Un homme par gardeyn porta lassise de novele disseisine, ou le tenant dit par *Parnin* qe le pleyntif fut de pleyn age, jour de bref purchace, et il avoit respoundu vers[5] ly come a[6] homme de pleyn age; par quei il pria qil fuit vieu de la Court.—*Trew.* dit qe sil ust plee qe liereit soul vers home de pleyn age, com soun fait demene, qil devereit pleder, et donqes avoit la Cour garrant a targer, et autrement nient; qar si sic chescun enfaunt deynz age serroit delaie saunz cause.—Et a ceo assenti la COURT.—Puis il aleggea joyntenaunce de parcelle ove sa femme. A quei le pleyntif dit qil navoit rienz jour de bref purchace &c. A quei lautre dit qil ne put estre [partie] saunz sa Assisa Novæ Disseisinæ. [12 Li. Ass. 37; Fitz. *Assise*, 116.]

[1] 25184, par quei par, instead of par qi.

[2] 25184, attourne.

[3] 25184, et demanda jugement, instead of prest, &c.

[4] 16560, autre.

[5] 25184, a.

[6] 25184, vers.

A.D. 1338. be party without his wife. And this was not allowed. Wherefore, as to parcel the tenant pleaded to the assise by bailiff; and as to the rest he vouched one who warranted, and pleaded the plaintiff's release in bar, and said that the plaintiff was of full age and prayed that the latter might be viewed by the Court.—*Trewith* said that the King had recorded that the plaintiff was under age, and since the date at which that deed purported to be executed; wherefore he did not think that he should be put to answer to that deed.—SCHARDELOWE and all the other JUSTICES said that this was only an office of the Chancery, which ought not to deprive any one of his answer. —*Parning* said, Although the deed purports to be of earlier date, it may be that the deed was made since the appointment of his guardian was recorded, and we will aver that he was of full age on the day of the making thereof.—*Trewith.* Although he against whom the deed is used might say that the deed was made at a time other than that which the date purports, he who uses it can never say that it was made at another time &c. —But this was denied.—Then *Trewith* put forward his client in person, and the latter was adjudged to be of full age.—And then the tenant who had by bailiff pleaded to the assise for the whole of the rest came and pleaded in bar the same release which was pleaded by the warrantor &c.—*Trewith* said that he should not get to that, because he had previously pleaded to the assise by bailiff, and also for the reason upon which a decision had been given in relation to the warrantor &c.—And it was not allowed.—*Quære;* and note here in this plea that the tenant pleaded to the assise at the commencement as to parcel by bailiff, and as to parcel in his own person that he was joint-tenant with his wife by virtue of a charter.—*Quære* whether he could, for no objection was raised.—And the plaintiff said with respect to the joint-tenancy that he who pleaded that plea had not anything on the day when the writ was purchased,

femme. *Et non allocatur.* Par quei quant a parcelle le tenant pleda[1] ad lassise par baillif; et quant a remenant il vocha un qe garranti et pleda le relees le pleyntif en barre, et dit [qil fuit de pleyn age et pria][2] qil fuit vieu de Court.— *Trew.* dit qe le Roy avoit recorde le pleyntif qil fuit deynz age, et puis la date compris deinz cel fait, par quei il nentend pas qe a ceo fait il serroit mis a respoundre. — SCH. et touz disoient qe ceo nest qe office de la Chauncellerie qe ne deit toller a un homme soun respouns.— *Parn.* dit qe coment qe le fait purporte date deigne temps, puit estre qe le fait se fit puis qe soun gardeyne fuit recorde, et nous voloms averer[3] qil fuit de pleyn age jour de la confection. — *Trew.* Coment qe celuy contre qi le fait est use put dire qe le fait se fit a autre temps qe la date ne purporte, celuy qe le use ne puit jammes dire qil se fit a autre temps &c.—*Quod erat negatum.*—Puis il mena son client en propre persone, qe fuit ajugge de pleyn age.—Et puis le tenant qavoit plede a lassise[4] de tut le remenant par baillif vient et pleda mesme le relees en barre qe fuit plede par la garrant &c. — *Trew.* dit qil navendra mye, pur ceo qil avoit plede a lassise devaunt par baillif, et auxint par la resoun qest determine devaunt vers le garrant &c. *Et non allocatur. Quære. Et nota hic in isto placito* qe le tenant pleda a comencement de parcelle par baillif [al assise et de parcelle][2] en propre persone par joyntenaunce ove sa femme par chartre. *Quære si posset,* qar il ne fuit mie chalange.—Et le pleyntif dit a la joyntenaunce qe celuy qe plede celle plee, jour de bref purchace, navoit rienz, A.D. 1338.

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[1] The word pleda is not in 16560.

[2] The words between brackets are not in 25184.

[3] 16560, averoms, instead of voloms averer.

[4] 16560, la seisine.

A.D. 1338. but that another was tenant; and *Parning* said that he could not be a party to that without his wife.—And then the COURT said that by common law they would immediately inquire by the assise whether he was tenant; and they said moreover that if they should find that he was tenant, they would hold the joint-tenancy as not denied, and would abate the writ. And note this, that it ought not to be inquired whether he held jointly &c.—And as to the release pleaded, the plaintiff, notwithstanding what was previously said, was put to answer; and he said that he was under age at the time of the making thereof.—And upon this they went to the assise &c.

Quare impedit.

(17.) § Hugh de Courtenay brought a *Quare impedit* in respect of the church of Brigham against Anthony de Lucy, and counted, by *Gayneford*, that one Isabel de Fortibus, Countess of Albemarle, was seised of this advowson, and presented her clerk, Anthony de Bek, who on her presentation &c., in the time of the grandfather &c. The said Isabel the Countess at Westminster &c. granted by fine the first presentation to R. de Yauenwyth if he should be alive, and, if not, to Walter de Twynham and Isabel his wife and to her heirs; and in consideration of that grant they granted the presentation on the second vacancy to the said Countess Isabel and her heirs; and so to the Countess Isabel and her heirs, and to Robert de Yauenwyth during his life, and to W. and Isabel his wife and her heirs, alternately, for ever. Hugh made the resort from the Countess Isabel to Mary the sister of Baldwin the father of B. the father of the Countess Isabel, and from Mary made the descent

eynz un autre fuit tenant, et *Parn.* dit qa ceo ne put il estre partie saunz sa femme.—Et puis la COURT dit qil voleient enquere sil fuit tenant par assise meyntenant par comune lei; et parlerent outre sils trovassent qil fuit tenant il tendra la jointtenance a nient dedit, et abatereit le bref.—*Et hoc nota,* qil ne deit[1] pas estre enquis le quiel il tient joyntement &c.[2] Et quant al relees[3] plede, le pleyntif, *non obstante* ceo qest dit devaunt, fuit mis a respondre: [et] dit qil fuit deynz age al temps de la confeccioun. Et sur ceo al assise &c. A.D. 1338.

(17.) § Hugh de Courtenai porta un *Quare impedit* de leglise de Brigham[4] vers Antoyn de Lucy, et counta par *Gayn.* qun Isabele de Fortibus,[5] Countesse de Auimarl, fuit seisi de cest avoweson et presenta un soun clerk, Antoigne de Bek,[6] qa son &c. en temps laiel [&c. La dite][7] Isabele Countesse a Westmestre &c. par fyn [granta][7] a R. de Yauenwyth[8] le primer presentment, sil fuit en vie, et, si noun, a Walter de Twynham[9] et Isabele sa femme et as heirs, et pur cel graunt eux graunterent le presentment a la secunde voidaunce a la dite Isabele Countesse et a ses heirs; et issint Isabelle Countesse et ses heirs, et Robert de Yauenwyth[10] a sa vie, a W. et a Isabele sa femme et as heirs Isabele[11] entrechaungeablement [a touz jours].[7] H.[12] fit le resort de Isabele Countesse a Marie soer Baudewyn pere B. pere Isabele Countesse, Quare impedit.

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[1] 16560, dit.

[2] 25184, le quels ils eient joint, instead of le quiel il tient joyntement, &c.

[3] 16560, rente.

[4] 25184, Brickham.

[5] 16560, N.; 25184, Nortone. The names in this case have been corrected throughout by the record, which is printed at the end of the report (p. 32).

[6] 16560, Bel.

[7] The words between brackets are not in 16560.

[8] 16560, a Ramelle; 25184, a Ramelby.

[9] 25184, Walter Teueman; 16560, un autre Tuenam.

[10] 25184, Janelwore.

[11] 16560, a les heirs, instead of as heirs Isabele.

[12] MSS. B.

A.D. 1338. to J., and from J. to H., and from H. to Hugh who is now plaintiff, and said that the church became vacant because Antony de Bek was created Bishop of Durham, wherefore Robert de Yauenwyth presented his clerk, Robert de Musgrave, who on his presentation &c., and said that the Countess Isabel died. Because she held the manor of Newnham in the county of Oxford the King, the grandfather &c., caused to be seized all her lands and tenements and all her interest in the advowson; and the King died seised, and in these circumstances the church became vacant by the death of Robert de Musgrave, wherefore King Edward, the father, presented William de Melton in right of Hugh de Courtenay. And then he made the descent from Isabel to Adam and from Adam to Walter. And then the King restored to Hugh all his right and inheritance and his interest in the advowson. And then, because William de Meltone was created Archbishop of York, the church became vacant. Wherefore the said Walter presented his clerk, Thomas de Burghe, who on his presentation &c., through whose death the church is now vacant. And afterwards the said Walter granted and released to Hugh, by a deed (which was put forward) all the right which he had in the advowson. Thus Hugh is the sole patron, and so it belongs to him to present, and Anthony disturbs him.—Anthony came by *Kelshulle* and said that William de Fortibus, Earl of Albemarle, was seised of the honour of Cockermouth to which this advowson is appendant, and that he, in the time of King Henry, presented his clerk Roger de Seton who on his presentation was admitted &c.; which Earl died while one Thomas his son

et de Marie fit la descente a J., et de J. a H., et de H. a H. qe ore se pleynt, et dit qe leglise se voida pur ceo qe A. fut cree evesqe de Durham, par quei Robert de Yauenwyth[1] presenta un soun clerk Robert de Mousgrave qe a soun presentment[2] &c., et dit qe Isabele Countesse morut. Pur ceo qele tient le maner de Newenham en le counte Oxone le Roi laiel fit seisir touz ses terres et tenementz et ceo qe a lui apent de lavoweson; et le Roy morust seisi, issint qe leglise se voida par la mort Robert de Musgrave, par quei le Roi E. le pere presenta William de Meltone en le dreit Hugh [de Courtenay].[3] Et puis fit la descente de Isabele a Adam et de Adam a Wauter.[4] Et puis le Roi rendi a Hugh tut son [dreit et][3] heritage et ceo qe luy afferreit de lavowesoun. Et puis pur ceo qe William de Meltone fuit crees en Evesqe Deverwik la eglise se voida. Par quei le dit Wauter presenta un soun clerk Thomas de Burghe, qa soun presentement &c., par qi mort leglise est ore voide. Et apres nome celuy [Wauter][3] graunta et relessa par un fait (quel il mist avant) a Hugh tut le dreit qil avoit en lavoweson. Issint est Hugh soul patroun; issint appent a luy a presenter, et Antoyn luy destourbe.—Antoyn vient par *Kels.* [et dit qe William de Fortibus],[5] Counte de Auimarl, fuit seisi del honour de Cokermouth a quel cest avoweson est appendant, le quel presenta un soun clerk Roger de Setone[6] en temps le Roi H., qe a soun presentement [fut resceu][7] &c.; le quiel morust [un][7] Thomas

A.D. 1338.

[1] 16560, Janewic; 25184, Ranewitz.

[2] The word presentment is not in 25184.

[3] The words between brackets are not in 16560.

[4] 16560, la descente de Hugh Isabele et Adam de A. a Wauter. In both MSS. are added the words qa soun presentment, &c.

[5] In 16560 there is a blank space of half an inch between *Kels.* and Counte; in 25184 there is a smaller space with the words de Norton before Counte.

[6] MSS. Suttone.

[7] The words between brackets are not in 25184.

A.D. 1338. was under age, by reason of whose nonage the King seized all his lands and assigned this honour to Isabel to hold in dower in allowance for the other tenements there; and, because the church became vacant by the death of Roger presented by William, she presented her clerk Godfrey Giffard, who on her presentation was admitted. And then he said that the church became vacant by the death of R. son of John, who on her presentation &c. And then Thomas the son of William de Fortibus died without heir; wherefore King Edward, the grandfather, seized all the lands which belonged to William de Fortibus, as his escheat, and gave them to Anthony de Lucy with the fees and advowsons by a charter—which he put forward,—and thus it belongs to him to present.—To which the Earl came and said by *Gayneford* that whereas he had already said how King Edward the father presented in right of Hugh, he now wished plainly to show it; and he said that the said Hugh had brought a *Quare impedit* against the same Thomas, while the hands of the Ordinary were tied, wherefore the said Hugh sued by petition to the King. Then the King caused to come his Justices before whom the writ of *Quare impedit* was brought and the judgment given for Hugh, so that the right might he shown on both sides, and it was adjudged that the King should have a writ to the Bishop by reason of the nonage of Hugh. And afterwards the King directed his Justices at the Exchequer to inquire of Hugh's right and of his own right; wherefore he rendered to the King whatever he had in the advowson; so that presentation was made by the King in right of Hugh; and then Walter de Twynham presented, which presentation they have not denied, concerning which they would not answer &c.—And then *Parning* said, Since we have admitted that the Countess

soun fitz deynz age, par qi noun age le Roi seisit tote la terre et cest honour assigna a Isabele [a tenere][1] en dower en allowaunce des autres tenementz la; et, pur ceo qe leglise se voida par la mort Roger[2] presente par William, presenta un soun clerk Godefroi[3] Giffard qa soun presentement fut resceu. Et puis dit qe leglise se voida par la mort R. le fitz Johan qa son presentement &c. Et puis Thomas le fitz W. de Fortibus[4] morust saunz heir; par quei le Roy E. le aiel seisit touz les terres qe furent a William de Fortibus[5] com sa eschete et dona a Antoyn de Lusci ove fees et avowesons par chartre, quele il mist avant, et issint appent a ly a presenter.[6] A qui le Counte[7] vient et dit par *Gayn.* qe la ou il avoit dit devant coment le Roi E. le pere presenta en le dreit Hugh, et voleit overtement mustrer celui; et dit qe le dit Hugh avoit porte un *Quare impedit* vers mesme cestui Thomas en les meyns lordinare furent liez, par quei le dit Hugh siwist par peticion au Roi; puis[8] le Roi fit venir ses Justices devant queux le bref fuit porte de *Quare impedit* et le jugement rendu pur Hugh, issint qe le dreit fuit moustre dune part et dautre, issint qil fuit ajugge qe le Roy avoit bref al Evesqe par resoun del noun age Hugh. Et puis le Roy maunda ses Justices al Eschecour[9] denquere del dreit Hugh et soun dreit demene; par quei il rendi au Roi ceo qil avoit en lavoweson; issint fut cest presentement[10] fait par le Roi en le dreit Hugh; et puis Wauter de Twynham[11] presenta, [quel presentment][1] ils nount mie dedit, de quei ils ne voleynt[12] respoundre &c.—Et puis *Parn.* dit qe depuis qe nous avoms

A.D. 1338.

[1] The words between brackets are not in 16560.
[2] Both MSS. Robert.
[3] 16560, G.; 25184, Gilbert.
[4] 16560, N.; 25184, Nortone
[5] Both MSS. Nortone.
[6] 25184 &c. instead of a presenter.
[7] 16560, A quiel Counte.
[8] 25184, par quei.
[9] 16560, a ses checures.
[10] Both MSS. proces.
[11] 16560, W.; 25184, Twynkham.
[12] 25184, se voillent, instead of ne voleynt.

A.D. 1338. Isabel presented Anthony de Bek, but said that it was while she held in dower in right of &c., thus we have defeated the foundation of his title &c. And then he said that the presentation which Robert de Yauenwyth made to Robert de Musgrave was in the time when the Countess Isabel held in dower, and the presentation which King Edward, the father of the present King, made to William de Meltone was in his own right, and could not be in right of Hugh, because the inheritance could not come to him through her who had only a tenancy in dower. And he said moreover, as to the presentation which Walter de Twynham made to Thomas de Burghe, that it was made in the time of Thomas de Richmond, who held the honour of Cockermouth for the term of his life by lease from our Lord the King, by which means they could not put the King out of possession; wherefore he demanded judgment. With respect to this last matter *Parning* said he would say it [in defence] to the Court; but at last he said it [as a plaintiff] against the party.—And on the morrow *Gayneford* said, Sir, you see clearly how he claims this advowson, and his claim can not be understood any more than one of an advowson belonging to a duchy,—for "honour" is a name of dignity which comprises within itself many things in gross to which advowsons may be appurtenant, so that it can not in itself attract an appendancy &c.; wherefore, if he will, let him declare that this has some particular meaning; if not, you can not have an answer. —And *Parning* said that he would say nothing more, and prayed judgment.—*Trewith* said that, if the advowson were appurtenant to a manor which was held of the honour, it might be said to be appurtenant to the honour. —And consequently presentees to the church &c.—And many other things were said about it &c.—And then it was

conu qe Isabele Countesse presenta Antoyn de Bek, A.D. 1338.
mes ceo fuit[1] tanqe ele tient en dower en le dreit &c., issint avoms defait le fondement de son title &c. Et puis dit qe le presentement qe Robert de Yauenwyth[2] fit a R. de Musgrave fut en temps qe Isabele Countesse le tient en dower, et le presentement qe le Roy E. pere le Roi qore est fait a[3] W. de Meltone fuit en soun dreit demene, et ne puit estre en le dreit Hugh qar lenheritement ne put estre a luy par cel qe navoit[4] qe tenance en dower. Et dit outre qe quant a presentment qe Walter de Twynham fait a Thomas de Burghe[5] ceo fuit fait en temps Thomas de Richemund, qe[6] tient lonour de Cokermuthe a terme de sa vie du lees nostre seignur le Roi, par les queux choses ne pount metter le Roi hors de possession; par quei il demande jugement. De ceo dreyn dit *Parn.* qil dirreit a la Court &c.; mes a derreyn le dit il vers la partie. Et lendemayne *Gayn.* dit, Sire, vous veiez bien coment il cleyme cest avoweson, quele chose ne put estre entendu plus toust[7] qune duchee, qar honour est un noun de dignite qe[8] comprent en soi plusours groses [as][9] queux avowesons poount estre apurtenants qe cel[10] ne put attreer appendance &c.; par quei sil voille declare cella cest un, et si noun vous ne poiiz aver respouns.[11]—Et *Par.* dit qil ne voleit nient plus dire, et pria jugement.—*Trew.* dit qe, si lavoweson fuit appurtenant a un maner qe fuit tenus del honour,[12] issint pout il estre dit appurtenant al honour.—Et por tant genz en eglise &c.—[*Et plura*][9] *alia dicta erant* &c.—Et puis [dit][9] fuit par la COURT

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[1] 16560, fount.

[2] MSS. Janewiche.

[3] 25184, de.

[4] 25184, al une parcelle qun navoit, instead of a luy par cel qe navoit.

[5] Both MSS. Burtone.

[6] 25184, R. Richenam qun, instead of Richemund qe.

[7] toust is in 16560, but not in 25184.

[8] 25184, qun.

[9] The words between brackets are not in 16560.

[10] 25184, qun cella, instead o qe cel.

[11] 25184, poez aver reversion, instead of ne poiiz aver respouns.

[12] 25184, son maner qe fut com del avoweson, instead of un maner qe fuit tenus del honour.

A.D. 1338. said by the COURT that the advowson might be appurtenant to the honour. Wherefore *Trewith* said that he was in the position of a stranger as purchaser, and he had said that, at the time when Thomas de Richmond was tenant for life, the right was the King's, so far as the presentation of Walter de Twynham was concerned; and the Statute[1] gives the right to avoid a presentation to privies only; and besides, since they have admitted that the King had possession by Isabel, and then another presented, the King was thereby out of possession and put to his first writ of Right in an action which he could not give to another; wherefore &c. —*Gayneford* said that, whereas they have said that the Countess Isabel presented Anthony de Bek to the church as appendant to the honour of Cockermouth which she had at that time in dower &c., he would aver that she was seised of the advowson as of fee and of right at the time when she presented Anthony de Bek, without this that she presented to the church as appurtenant, as they say. And the record of this plea follows hereafter:—

Anthony de Lucy was summoned to answer Hugh de Courtenay, Earl of Devon, in a plea that he should permit the same Hugh to present a fit person to the church of Brigham which is vacant and belongs to his gift &c.; and whereupon the said Earl by John de Crukerne, his attorney, says that one Isabel de Fortibus, formerly Countess of Albemarle, was seised of the advowson of the church aforesaid, and that she presented one Anthony de Bek, her clerk, to the same church, who on her presentation was admitted and instituted, in time of peace, in the time of the Lord Edward the King, the grandfather of the King that now is. And afterwards in the Court of the same King Edward the grandfather &c. fifteen days after

[1] 13 Edw. I. (Westm. 2.) c. 5.

qe lavowesoun pout estre appurtenaunt al honour. A.D. 1338.
Par quei *Trew.* dit qil se fit estrange [purchaceour],[1] et il ad[2] dit qal[3] temps qe Thomas de Richemund fuit tenaunt a terme de vie est le dreit le Roy quant [a][1] W. de Twynham presentment;[4] lestatut [ne][1] doune pas voider de presentement mes pur privies; et estre ceo, de puis qils ount conu qe le Roi avoit possession par Isabele et puis autre presenta, qe le Roi fut par taunt hors de possession et mis a son primer bref de dreit en accioun qil ne pout doner a autre, par quei, &c.—*Gayn.* dit qe, la ou ils ount dist qe Isabele Countesse presenta Anton de Bek com appent al honour de Cokermuthe, qele avoit a cel temps en dower &c., qil[5] voleit averer qe a cel temps qel fuit seisi del avoweson com de fee et de dreit au temps qant ele presenta [Antoyn du Bek saunz ceo qele presenta com appurtenant coum ceux diount &c. Et le recorde de ceste plee ensuy si apres][6]:—

Antonius de Lucy summonitus fuit ad respondendum Hugoni de Courtenay Comiti Devoniæ de placito quod permittat ipsum præsentare idoneam personam ad ecclesiam de Brigham quæ vacat et ad suam spectat donationem, &c. Et unde idem Comes, per Johannem de Crukerne attornatum suum, dicit quod quædam Isabella de Fortibus quondam Comitissa de Alba Marlea fuit seisita de advocatione ecclesiæ prædictæ, quæ ad eandem ecclesiam præsentavit quendam Antonium de Bek clericum suum, qui ad præsentationem suam fuit admissus et institutus, tempore pacis, tempore domini Edwardi Regis, avi domini Regis nunc. Et postea in curia ejusdem Regis Edwardi avi &c. a die Sancti Jo-

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[1] The words between brackets are not in 16560.

[2] 16560, na.

[3] 16560, al.

[4] 16560, &c., instead of presentment.

[5] 16560, qe ele.

[6] The words between brackets are not in 16560. The record which follows is incomplete and very inaccurate in both MSS. In 16560 the leaf on which the greater part of it must have been written is wanting. It has, however, been found on the roll of *Placita de Banco* of this term, R°. 118, from which source it has been printed.

A.D. 1338. the day of St. John the Baptist in the ninth year of his reign, before Thomas Weylond and his companions Justices of the same King Edward the grandfather &c. at Westminster, a certain fine was levied between Robert de Yauenwyth, and Walter de Twynham, and Isabel his wife, plaintiffs, and the aforesaid Countess deforciant, of the advowson of the church aforesaid; by which fine the said Countess granted for herself and her heirs that as soon as the church aforesaid should be vacant the aforesaid Robert de Yauenwyth should present his clerk to the same church, if the same Robert should then be living, and if the same Robert should then not be living, then the aforesaid Walter and Isabel, or the heirs of the same Isabel should present their clerk to the same church without contradiction or impediment from the aforesaid Countess or her heirs. And in consideration of that acknowledgment, &c., the aforesaid Walter and Isabel his wife granted, for themselves and the heirs of the same Isabel, that when it should happen that the church aforesaid should be vacant through the death or cession of the clerk who should have been admitted and instituted to the same church upon the presentation of the same Robert or the same Walter and Isabel his wife, or the heirs of the same Isabel, the aforesaid Countess or her heirs should present their clerk to the same church without contradiction or impediment from the same Robert, Walter, and Isabel, or the heirs of the same Isabel:—So that, when it should happen that the church aforesaid should be vacant after the death or cession of the clerk who should have been admitted and instituted &c. to the same church upon the presentation of the same Countess or her heirs, the aforesaid Robert should present his clerk to the same church, if the same Robert should then be living, and, if he should not be living, the aforesaid Walter and Isabel or the heirs of the same Isabel should present their clerk to the same church, and so the aforesaid Robert during the whole of his life, and, after the death of the aforesaid Robert, the aforesaid Walter and Isabel his wife and the heirs of the same Isabel, and the aforesaid Countess and her heirs, alternately and in succession, should present their clerks to the same church for ever. And afterwards, the church aforesaid being vacant, through the cession of the aforesaid Anthony de Bek who was created Bishop of Durham, the aforesaid Robert de Yauenwyth, beginning his turn &c., by virtue of the form of the fine aforesaid, presented to the church aforesaid one Ro-

hannis Baptistæ in xv. dies anno regni sui nono, coram Thoma de Weylond et sociis suis Justiciariis ejusdem Regis Edwardi avi &c. apud Westmonasterium, levavit[1] quidam finis inter Robertum de Yauenwyth et Walterum de Twynham et Isabellam uxorem ejus querentes et præfatam Comitissam deforciantem de advocatione ecclesiæ prædictæ; per quem finem prædicta Comitissa concessit pro se et heredibus suis quod quam citò ecclesia prædicta vacaret prædictus Robertus de Yauenwyth præsentaret clericum suum ad eandem ecclesiam, si idem Robertus tunc superstes fuisset, et si idem Robertus tunc superstes non fuisset, tunc prædicti Walterus et Isabella vel heredes ipsius Isabellæ præsentarent clericum suum ad eandem ecclesiam sine contradictione vel impedimento prædictæ Comitissæ vel heredum suorum. Et pro illa recognitione &c. prædicti Walterus et Isabella uxor ejus concesserunt pro se et heredibus ipsius Isabellæ quod cum contingeret prædictam ecclesiam vacare per mortem vel cessionem clerici qui ad præsentationem ipsius Roberti vel ipsorum Walteri et Isabellæ uxoris ejus sive heredum ipsius Isabellæ ad eandem ecclesiam fuisset admissus et institutus, prædicta Comitissa vel heredes sui præsentarent clericum suum ad eandem ecclesiam absque contradictione seu impedimento ipsorum Roberti, Walteri, et Isabellæ, vel heredum ipsius Isabellæ. Ita quod, cum contingeret prædictam ecclesiam vacare post mortem vel cessionem clerici qui ad præsentationem ipsius Comitissæ vel heredum suorum ad eandem ecclesiam fuisset admissus et institutus &c., prædictus Robertus præsentaret clericum suum ad eandem ecclesiam, si idem Robertus tunc superstes fuisset, et, si non superstes fuisset, prædicti Walterus et Isabella vel heredes ipsius Isabellæ præsentarent clericum suum ad eandem ecclesiam, et sic prædictus Robertus, tota vita sua, et, post mortem prædicti Roberti, prædicti Walterus et Isabella uxor ejus et heredes ipsius Isabellæ, et prædicta Comitissa et heredes sui, alternatim et successione, præsentarent clericos suos ad eandem ecclesiam in perpetuum. Et postmodum, vacante prædicta ecclesia, per cessionem prædicti Antonii de Bek qui fuit creatus in Episcopum Dunelmensem, prædictus Robertus de Yauenwyth, per formam finis prædicti, incipiendo turnum &c., præsentavit ad prædictam ecclesiam quendam Robertum de

A.D. 1338.

[1] *Levavit finis* is the usual form in the rolls to express "a fine was levied."

A.D. 1338. bert de Musegrave, his clerk, who, upon his presentation, was admitted and instituted &c., in time of peace, in the time of the aforesaid King Edward, the grandfather, &c. And from the same Countess, because she died without heir of her body, the right of presentation to the church aforesaid, by virtue of the fine aforesaid, in turn &c., resorted to one Mary as cousin and heir to the sister of one Baldwin the father of Baldwin the father of the aforesaid Countess. And from the same Mary the right of presentation in turn in the form aforesaid &c. descended to one John as her son and heir, and from the same John to one Hugh as his son and heir &c. And from the same Hugh the right of presentation in turn in the form aforesaid &c. descended to this Hugh, who is now plaintiff, as his son and heir. And because the aforesaid Countess held of the aforesaid Edward the King, the grandfather &c., the manor of Newenham in the county of Oxford, and also other lands and tenements, *in capite,* on the day on which she died, the same King the grandfather &c. seized into his hand all the lands and tenements, fees, and advowsons, which belonged to the aforesaid Countess at the time of her death. And the same King, the grandfather, &c., died before those lands, tenements, fees, and advowsons were sued out of the hand of the same King, the grandfather, &c., wherefore the same lands, tenements, fees, and advowsons came into the hand of the Lord Edward the King, the father of the Lord the King that now is. And at the time during which the same lands, tenements, fees, and advowsons were in the hand of the same King the father &c. the aforesaid church became vacant through the death of the aforesaid Robert de Musegrave, wherefore the same King the father, &c., as in right of the aforesaid Earl Hugh, presented to the same church one William de Melton, his clerk, who upon his presentation was admitted and instituted, in time of peace, in the time of the same King the father. And afterwards the same Earl sued to the same King the father &c., and had livery of the lands, tenements, fees, and advowsons, which belonged to the aforesaid Countess. And after the death of the aforesaid Robert de Yauenwyth, and also after the death of the aforesaid Walter de Twynham and Isabel his wife, the right of presentation to the church aforesaid in turn descended from the same Isabel, according to the form of the fine aforesaid &c., to one Adam as her son and heir, and from the same Adam to one Walter as his son and heir &c. And the church aforesaid being vacant through the cession of the aforesaid William de Melton, who was created Archbishop of York, the aforesaid

Musegrave clericum suum, qui, ad præsentationem suam, fuit admissus et institutus &c., tempore pacis, tempore prædicti Edwardi Regis avi &c. Et de ipsa Comitissa, quia obiit sine herede de se, resortiebatur jus præsentandi ad prædictam ecclesiam, virtute finis prædicti per turnum &c., cuidam Mariæ ut consanguineæ et heredi sorori cujusdam Baldewini patris Baldewini patris prædictæ Comitissæ. Et de ipsa Maria descendit jus præsentandi per turnum in forma prædicta &c., cuidam Johanni ut filio et heredi, et de ipso Johanne cuidam Hugoni ut filio et heredi &c. Et de ipso Hugone descendit jus præsentandi per turnum in forma prædicta &c. isti Hugoni ut filio et heredi qui nunc queritur. Et pro eo quod prædicta Comitissa tenuit de prædicto Edwardo Rege avo &c. manerium de Newenham in Comitatu Oxoniæ, et etiam alia terras et tenementa, in capite, die quo obiit idem Rex avus &c. seisivit in manum suam omnia terras et tenementa, feoda et advocationes, quæ fuerunt prædictæ Comitissæ tempore mortis suæ, qui quidem Rex avus &c. obiit antequam terræ, tenementa, feoda, et advocationes illa secuta fuerunt extra manum ipsius Regis avi &c., per quod eadem terræ, tenementa, feoda, et advocationes devenerunt in manum domini Edwardi Regis patris domini Regis nunc; quo tempore dum eadem terræ, tenementa, feoda, et advocationes fuerunt in manu ipsius Regis patris &c. prædicta ecclesia vacavit per mortem prædicti Roberti de Musegrave, per quod idem Rex pater &c., ut in jure prædicti Hugonis Comitis, præsentavit ad eandem ecclesiam quendam Willelmum de Melton clericum suum, qui ad præsentationem suam fuit admissus et institutus, tempore pacis, tempore ejusdem Regis patris. Et postmodum idem Comes secutus fuit versus ipsum Regem patrem &c., et habuit deliberationem terrarum, tenementorum, feodorum, et advocationum quæ fuerunt prædictæ Comitissæ. Et post mortem prædicti Roberti de Yauenwyth, et etiam post mortem prædictorum Walteri de Twynham et Isabellæ uxoris ejus, de ipsa Isabella descendit jus præsentandi ad prædictam ecclesiam, per turnum, per formam finis prædicti &c., cuidam Adæ ut filio et heredi; et de ipso Adam cuidam Waltero ut filio et heredi &c. Et vacante prædicta ecclesia per cessionem prædicti Willelmi de Melton, qui creatus fuit in

A.D. 1338.

A.D. 1338. Walter de Twynham presented to the same church one Thomas de Burghe, his clerk, who, upon his presentation, was admitted and instituted, in time of peace, in the time of the aforesaid King the father &c., through whose death the church aforesaid is now vacant. And the same Walter, after the institution of his clerk aforesaid upon his presentation, granted, remitted, and quit-claimed to the aforesaid Earl and his heirs all the right and claim which he had in the advowson aforesaid. And so the same Earl is sole patron of the church aforesaid. And for that reason it belongs to the same Earl to present to the church aforesaid, and the aforesaid Anthony wrongfully hinders him. Whereupon he says that he is injured and endamaged to the value of two thousand pounds. And thereof he brings his suit &c.

And Anthony comes and says that it belongs to him, and not to the Earl aforesaid, to present to the said church, because he says that one William de Fortibus, formerly Earl of Albemarle, was seised of the honour of Cockermouth, to which honour the advowson of the aforesaid church of Brigham appertains, who presented to the same church one Master Roger de Seton his clerk, who, upon his presentation, was admitted and instituted in time of peace, in the time of the Lord Henry the King, the great-grandfather of the Lord the King that now is. After the death of which Earl, because the same Earl held the said honour to which &c., together with other tenements, of the said Lord the King *in capite*, the same King Henry seized into his hand the said honour to which, &c., together with the fees and advowsons appertaining to the said honour, by title of wardship, by reason of the minority of one Thomas, son and heir of the Earl aforesaid. And afterwards the same honour, together with the fees and advowsons belonging to the same honour, was assigned to the aforesaid Isabel de Fortibus, formerly the wife of the aforesaid Earl of Albemarle, to be held by title of dower in allowance for other lands and tenements, &c. And the church aforesaid being vacant through the resignation of the aforesaid Master Roger, the aforesaid Countess being then tenant in dower, &c., presented to the same church (in right of the aforesaid heir, then being in the wardship of the aforesaid King Henry) one Godfrey Giffard, her clerk, who, on her presentation, was admitted and instituted in time of peace, in the time of the aforesaid King Henry, &c. And afterwards the aforesaid Thomas, son and heir of the aforesaid

Archiepiscopum Eboracensem, prædictus Walterus de Twyn- A.D. 1338.
ham præsentavit ad eandem ecclesiam quendam Thomam de Burghe clericum suum, qui, ad præsentationem suam, fuit admissus et institutus, tempore pacis, tempore prædicti Regis patris &c., per cujus mortem prædicta ecclesia modo vacat. Et idem Walterus, post institutionem prædicti clerici sui ad suam præsentationem, concessit, remisit, et quietum clamavit prædicto Comiti et heredibus suis totum jus et clameum quod habuit in advocatione prædicta. Et ita ipse Comes est solus advocatus ecclesiæ prædictæ. Et ea ratione ad ipsum Comitem pertinet ad prædictam ecclesiam præsentare, et prædictus Antonius ipsum injuste impedit. Unde dicit quod deterioratus est et damnum habet ad valenciam duorum millium librarum. Et inde producit sectam &c.

Et Antonius venit et dicit quod ad ipsum, et non ad prædictum Comitem, pertinet ad dictam ecclesiam præsentare, quia dicit quod quidam Willelmus de Fortibus, quondam Comes Albæ Marleæ, fuit seisitus de honore de Cokermuthe, ad quem honorem advocatio prædictæ ecclesiæ de Brigham pertinet, qui ad eandem ecclesiam præsentavit quendam Magistrum Rogerum de Seton clericum suum, qui ad præsentationem suam fuit admissus et institutus, tempore pacis, tempore domini Henrici Regis proavi domini Regis nunc, post mortem cujus Comitis, pro eo quod idem Comes dictum honorem ad quem &c., simul cum aliis tenementis, tenuit de dicto domino Rege in capite, idem Rex Henricus dictum honorem ad quem, &c., simul cum feodis et advocationibus dicto honori pertinentibus, seisivit in manum suam, nomine custodiæ, ratione minoris ætatis cujusdam Thomæ filii et heredis prædicti Comitis. Et postmodum idem honor, simul cum feodis et advocationibus eidem honori spectantibus, assignatus fuit prædictæ Isabellæ de Fortibus, quondam uxori prædicti Comitis Albæ Marleæ, tenendus nomine dotis in allocationem aliorum terrarum et tenementorum, &c. Et vacante ecclesia prædicta per resignationem prædicti Magistri Rogeri, prædicta Comitissa adtunc tenens in dotem, &c., in jure prædicti heredis in custodia prædicti Henrici Regis existentis, præsentavit ad eandem ecclesiam quendam Godefridum Giffard clericum suum, qui ad præsentationem suam fuit admissus et institutus tempore pacis, tempore prædicti Henrici Regis, &c. Et postmodum prædictus Thomas filius et heres prædicti Comitis Albæ Marleæ

A.D. 1338. Earl of Albemarle, died. And from the same Thomas, because he died without heir of his body, the right to the whole of his inheritance in demesne and reversion descended to one Aveline as his sister and heir, who was then under age, whose wardship the aforesaid King Henry seized into his hand. And, after the death of the same King Henry, the wardship of the same Aveline and also of her lands and tenements came into the hand of the Lord Edward the King, the grandfather of the Lord the King that now is. Which Aveline being in the wardship of the same King Edward, the grandfather, &c., by reason of her minority, the church aforesaid became vacant through the cession of the aforesaid Godfrey, who was then created Bishop of Worcester, whereby the aforesaid Countess, as tenant in dower of the inheritance of the aforesaid Aveline, presented to the same church one Richard son of John, her clerk, who upon her presentation was admitted and instituted, in time of peace, in the time of the same King the grandfather, &c. And afterwards the aforesaid Aveline died without heir, &c., whereby the right to all the lands and tenements, together with the reversions which belonged to the same Aveline, accrued to the aforesaid Edward the King, the grandfather, &c., as his escheat. And then, the church aforesaid being vacant through the resignation of the aforesaid Richard son of John, the aforesaid Countess, as tenant in dower of the honour aforesaid to which &c., as in right of the aforesaid King Edward the grandfather, &c., to whom the reversion thereof belonged, presented to the same church the aforesaid Anthony de Bek, her clerk, who upon her presentation was admitted and instituted in the time of the aforesaid King Edward the grandfather, &c. And afterwards, after the death of the aforesaid Countess, the aforesaid King, the grandfather, &c., seized into his hand the honour aforesaid, to which, &c., together with the other lands and tenements which the aforesaid Countess held in dower, and thereof died seised, and after his death the same honour, to which, &c., together, &c., descended to the Lord Edward formerly King of England, the father of the Lord the King that now is, which King, the father, &c., by his charter, of which *profert* is now made, &c., gave and granted the honour aforesaid, to which, &c., together with the fees and advowsons, &c., to the aforesaid Anthony, to have and to hold to him and his heirs for ever. And so he is seised of the honour aforesaid, to which, &c. And, as to the presentation made by the aforesaid Robert de Yauen-

obiit. Et de ipso Thoma descendit jus totius hereditatis suæ A.D. 1338.
in dominicis et reversionibus, quia obiit sine herede de se, cuidam Avelinæ ut sorori et heredi, quæ[1] tunc fuit infra ætatem, cujus custodiam prædictus Henricus Rex seisivit in manum suam. Et post mortem ipsius Henrici Regis, custodia ipsius Avelinæ et etiam terrarum et tenementorum suorum devenit in manum domini Edwardi Regis avi domini Regis nunc. Qua Avelina existente in custodia ipsius Edwardi Regis avi, &c., ratione minoris ætatis suæ, prædicta ecclesia vacavit per cessionem prædicti Godefridi, qui tunc creatus fuit in Episcopum Wygorniensem, per quod prædicta Comitissa, ut tenens in dotem de hereditate prædictæ Avelinæ, præsentavit ad eandem ecclesiam quendam Ricardum filium Johannis clericum suum, qui ad præsentationem suam fuit admissus et institutus, tempore pacis, tempore ejusdem Regis avi, &c. Et postea prædicta Avelina obiit sine herede, &c., per quod jus omnium terrarum et tenementorum, simul cum reversionibus quæ fuerunt ipsius Avelinæ, accreverunt prædicto Edwardo Regi, avo, etc., ut escaeta sua. Et tunc, vacante prædicta ecclesia per resignationem prædicti Ricardi filii Johannis, prædicta Comitissa, ut tenens in dotem honorem prædictum ad quem, &c., ut in jure prædicti Regis Edwardi avi, &c., cui reversio inde spectabat, præsentavit ad eandem ecclesiam prædictum Antonium de Bek, clericum suum, qui ad præsentationem suam fuit admissus et institutus tempore prædicti Edwardi Regis avi, &c. Et postmodum post mortem prædictæ Comitissæ prædictus Rex avus, &c., seisivit in manum suam prædictum honorem ad quem, &c., simul cum aliis terris et tenementis quæ prædicta Comitissa tenuit in dotem, et inde obiit seisitus, post cujus mortem idem honor ad quem, &c., simul, &c., descendit domino Edwardo quondam Regi Angliæ patri domini Regis nunc, qui quidem Rex pater, &c. per cartam suam quam hic profert, &c., honorem prædictum ad quem, &c., simul cum feodis et advocationibus, &c., dedit et concessit prædicto Antonio habendum et tenendum sibi et heredibus suis in perpetuum. Et ita est ipse seisitus de honore prædicto ad quem, &c. Et, quoad præsentationem factam per prædictum Robertum de Yauenwyth ad ecclesiam

[1] Qui in the record.

A.D. 1338. wyth to the church aforesaid, he says that this presentation was made while the aforesaid Countess held the honour aforesaid, to which, &c., in right of the aforesaid King Edward, the grandfather, &c. And, as to the presentation which the aforesaid Earl of Devon alleges to have been made by the aforesaid King Edward the father, &c., as in right of the same Earl of Devon, inasmuch as the advowson aforesaid was not then sued out of the hand of the same King, after the death of the aforesaid Countess, as he then asserted, it cannot be understood in law that this presentation was made in right of the same Earl of Devon as heir of the same Countess, since the same Countess had nothing in the honour aforesaid to which, &c., except as tenant in dower as he previously alleged. And so this presentation was in right of the same King, the father, &c., by reason of his escheat. And, as to the last presentation which the aforesaid Earl of Devon alleges to have been made by the aforesaid Walter de Twynham to the church aforesaid, he says that at that time one Thomas de Richmond held the honour aforesaid, to which, &c., for term of his life by lease from the aforesaid King, the father, &c., and that this presentation was an usurpation upon the same King which could not put the same King out of possession. And so he says that he is himself seised of the honour aforesaid, to which, &c., and is in possession of the advowson aforesaid as appertaining to the honour aforesaid by the gift of the aforesaid King, the father, &c. Whereof he prays judgment, and a writ to the Bishop, &c.

And the Earl says that in every writ of *Quare impedit* either party to the plea may be plaintiff, and, since the aforesaid Anthony in his answer makes himself plaintiff, and supposes himself to have the right of presentation inasmuch as he says that he has the honour of Cockermouth, to which honour he asserts that the advowson aforesaid appertains, and in his *ostensio* aforesaid he does not declare whether that advowson appertains to the dignity which is signified by that word honour (since honour is a word expressing a dignity), or to the chief manor of the same honour, or to any manor or freehold which is part of that honour, wherefore the same Earl does not understand that without a *declaratio* he has any need to answer to the *ostensio* of the aforesaid Anthony which is uncertain and of manifold interpretation. And if it appear to the Court that the *ostensio* of the aforesaid Anthony without any other *declaratio* is sufficient in this behalf, he is

prædictam dicit quod præsentatio illa facta fuit dum præ- A.D. 1338.
dicta Comitissa tenuit honorem prædictum ad quem, &c., in jure prædicti Edwardi Regis avi, &c. Et, quoad præsentationem quam prædictus Comes Devoniæ allegat fuisse factam per prædictum Edwardum Regem patrem, &c., ut in jure ipsius Comitis Devoniæ, pro eo quod advocatio prædicta adtunc non fuit secuta extra manum ipsius Regis post mortem prædictæ Comitissæ, ut tunc asseruit, hoc in jure intelligi non potest quod præsentatio illa facta fuit in jure ipsius Comitis Devoniæ ut heredis ipsius Comitissæ ex quo ipsa Comitissa nihil habuit in honore prædicto ad quem, &c., nisi ut tenens in dotem prout ipse superius allegavit; et ita præsentatio illa fuit in jure ipsius Regis patris, &c., ratione escaetæ suæ. Et, quoad ultimam præsentationem quam prædictus Comes Devoniæ allegat fuisse factam per prædictum Walterum de Twynham ad ecclesiam prædictam dicit quod tempore illo quidam Thomas de Richemund tenuit honorem prædictum ad quem, &c., ad terminum vitæ suæ ex dimissione prædicti Regis patris &c., quæ præsentatio fuit quædam purprisa super ipsum Regem, quæ non potuit ponere ipsum Regem extra possessionem. Et ita dicit quod ipse est seisitus de honore prædicto ad quem, &c., et in possessione advocationis prædictæ ut pertinentis ad honorem prædictum per donum prædicti Regis patris, &c. Unde petit judicium et breve Episcopo &c.

Et Comes dicit quod in quolibet brevi de *Quare impedit* utraque pars placiti actrix esse potest, et, ex quo prædictus Antonius in respondendo facit se actorem, et supponit se habere titulum præsentandi in hoc quod dicit se habere honorem de Cokermuthe, ad quem honorem asserit prædictam advocationem pertinere, et in ostensione sua prædicta non declarat utrum advocatio illa pertineat nobilitati quæ significatur per illud nomen honoris (cum honor sit nomen nobilitatis) an capitali manerio ejusdem honoris, seu alicui manerio vel libero tenemento quod sit pars illius honoris, unde idem Comes non intendit quod ad ostensionem prædicti Antonii quæ est incerta et multipliciter intelligenda sine declaratione necesse habeat respondere, &c. Et si videatur Curiæ quod ostensio prædicti Antonii absque aliqua alia declaratione sufficiens sit in hac

A.D. 1338. ready to answer over and to say sufficiently wherefore it belongs to him, the Earl, and not to the aforesaid Anthony, to present to the church aforesaid &c.

And Anthony says that he will not declare his *ostensio* aforesaid in any other manner, or say anything else in this behalf. And it was said to the same Earl that it appears to the Court that the *ostensio* of the aforesaid Anthony is sufficiently declared in this behalf, &c. And it is to be known that these two allegations preceding were entered by virtue of a certain writ which came to the Justices here, which writ is enrolled in the term of Saint Hilary in the thirteenth year of the King that now is, Roll No. 331.

And the Earl further says that (whereas the aforesaid Anthony says that it belongs to him to present to the church aforesaid because he is seised of the honour aforesaid to which he says that the advowson aforesaid appertains, and in his *ostensio* he says that the aforesaid Countess, from whom the same Earl took his title, was seised of the honour aforesaid, and of the advowson of the church aforesaid as appertaining to that honour, by title of dower, and as tenant in dower, in right of the aforesaid King, the grandfather, &c., presented to the same church Anthony de Bek) the aforesaid Countess was seised of the advowson aforesaid in fee-simple, and in her own right presented to the same church the aforesaid Anthony de Bek. And this he is ready to verify; whereof he prays judgment &c.

And Anthony says that the aforesaid Countess held the honour aforesaid, to which &c., in dower, and as tenant in dower presented to that church the aforesaid Anthony de Bek, and not in her own right as the aforesaid Earl says. And of this he puts himself upon the country. And the aforesaid Earl in like manner. Therefore the Sheriff is commanded that he cause to come at Westminster in eight days of Saint Hilary, twelve &c., by whom &c., and who neither &c., to make recognition &c., because as well &c. And hereupon the aforesaid Anthony puts in his place Hugh de Sadelyngslanes, Ranulph de Rymyngton, or John de Beverley, against the aforesaid Earl of Devon, as to the plea aforesaid &c. Afterwards, process being thereupon continued between the aforesaid Earl and Anthony, here, at Westminster to wit, until this present day, to wit in three weeks from Easter day in the fourteenth year of the reign of the King of England that now is,

parte, ipse paratus est ulterius respondere et satis dicere quare ad ipsum Comitem et non ad prædictum Antonium pertinet ad prædictam ecclesiam præsentare, &c. A.D. 1338.

Et Antonius dicit quod ipse ostensionem suam prædictam alio modo declarare vel aliquid aliud dicere non vult in hac parte. Et dictum est eidem Comiti quod videtur Curiæ quod ostensio prædicti Antonii satis declaratur in hac parte &c. Et sciendum quod istæ duæ allegationes præcedentes intratæ fuerunt virtute cujusdam brevis quod Justiciariis hic venit, quod quidem breve irrotulatur termino Sancti Hillarii anno Regni Regis nunc tertiodecimo, Rotulo cccxxxj.[1]

Et Comes ulterius dicit quod ubi prædictus Antonius dicit quod ad ipsum pertinet præsentare ad ecclesiam prædictam pro eo quod ipse seisitus est de honore prædicto ad quem dicit prædictam advocationem pertinere, et in ostensione sua dicit quod prædicta Comitissa, de qua ipse Comes sumpsit titulum suum, fuit seisita de honore prædicto, et de advocatione ecclesiæ prædictæ tanquam pertinente ad honorem illum, nomine dotis, et tanquam tenens in dotem, in jure prædicti Regis avi &c., præsentavit ad eandem prædictum Antonium de Bek, prædicta Comitissa fuit seisita de advocatione prædicta in feodo simplici, et in jure suo proprio præsentavit ad eandem ecclesiam prædictum Antonium de Bek. Et hoc paratus est verificare, unde petit judicium &c.

Et Antonius dicit quod prædicta Comitissa tenuit prædictum honorem ad quem etc. in dotem, et tanquam tenens in dotem præsentavit ad ecclesiam illam prædictum Antonium de Bek, et non in jure suo proprio sicut prædictus Comes dicit. Et de hoc ponit se super patriam. Et prædictus Comes similiter. Ideo præceptum est Vicecomiti quod venire faciat apud Westmonasterium in Octabis Sancti Hillarii xii. &c., per quos &c., et qui nec, &c., ad recognoscendum &c., quia tam &c. Et super hoc prædictus Antonius ponit loco suo Hugonem de Sadelyngslanes, Ranulphum de Rymyngtone, vel Johannem de Beverle versus prædictum Comitem Devoniæ de prædicto placito &c. Postea, continuato inde processu inter prædictos Comitem et Antonium, hic, scilicet apud Westmonasterium, usque ad hunc diem, scilicet a die Paschæ in, tres septimanas anno regni Regis nunc Angliæ quartodecimo,

[1] Printed at p. 47.

A.D. 1338. Now comes as well the aforesaid Earl, by his attorney aforesaid, as the aforesaid Anthony, by John de Beverley, his attorney. And the same Anthony, abandoning his plea aforesaid, cannot deny that the aforesaid Countess was seised of the advowson aforesaid in fee-simple, and presented to the church aforesaid the aforesaid Anthony de Bek in her own right, and not as tenant of the honour aforesaid in dower, nor that it belongs to the aforesaid Earl to present to the church aforesaid. Therefore it is considered that the aforesaid Earl do recover against the same Anthony his presentation to the church aforesaid and his damages &c., and do have a writ to the Archdeacon of Richmond, the Diocesan of that place, that, notwithstanding the counter claim of the aforesaid Anthony, he admit a fit person to the church aforesaid on the presentation of the aforesaid Earl; and the same Anthony is in mercy &c. And hereupon the aforesaid Earl remits to him the damages &c. Afterwards, on Tuesday next after the Feast of Saint Valentine in the year of the reign of the Lord the King that now is of England the fifteenth, and of France the second, the Lord the King sent his writ to Roger Hillary, his Chief Justice, to transmit the record and process of the plaint aforesaid before himself in his Chancery &c. And it is transmitted to him by one Edmund de Denham, to whom it is delivered in court to carry thither &c.

The Lord the King has sent his writ close to his Justices here in these words:—Edward by the grace of God, King of England, Lord of Ireland, and Duke of Aquitaine, to his Justices of the Bench, greeting. Whereas, as we have been informed, Hugh de Courtenay, Earl of Devon, impleads before you in the Bench aforesaid Anthony de Lucy for the cause that he permit the aforesaid Earl to present a fit person to the church of Brigham, in the county of Cumberland, and the same Anthony for his *ostensio juris* in that plea has answered and said that the Lord Edward, late King of England, our father, by charter, whereof he made *profert* before you, gave and granted to the same Anthony the honour of Cockermouth with the fees and advowsons belonging to the same honour, to which honour he asserted that the advowson aforesaid appertained, of which honour the same

Et modo veniunt tam prædictus Comes, per prædictum attornatum suum, quam prædictus Antonius, per Johannem de Beverle, attornatum suum. Et idem Antonius, omisso placito suo prædicto, non potest dedicere quin prædicta Comitissa fuit seisita de advocatione prædicta in feodo simplici et in jure suo proprio præsentavit ad prædictam ecclesiam prædictum Antonium de Bek, et non tanquam tenens in dotem honorem prædictum, et quin ad prædictum Comitem pertinet ad prædictam ecclesiam præsentare. Ideo consideratum est quod prædictus Comes recuperet versus eum præsentationem suam ad ecclesiam prædictam et damna sua &c., et habeat breve Archidiacono Richemundiæ, loci illius diocesano, quod, non obstante reclamatione prædicti Antonii, ad præsentationem prædicti Comitis ad prædictam ecclesiam idoneam personam admittat; et idem Antonius in misericordia &c. Et super hoc prædictus Comes remittit ei damna &c. Postea, die Martis proximo post festum Sancti Valentini anno regni domini Regis nunc Angliæ quintodecimo, et Franciæ secundo, dominus Rex mandavit breve suum Rogero Hillary, Capitali Justiciario suo, quod recordum et processum loquelæ prædictæ coram ipso in Cancellaria sua mitteret &c. Et ei mittitur per quendam Edmundum de Denham cui hic in Curia liberatur ad afferendum &c. A.D. 1338.

Dominus Rex mandavit breve[1] suum clausum Justiciariis suis hic in hæc verba:—Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, et Dux Aquitaniæ Justiciariis suis de Banco salutem. Cum, ut accepimus, Hugo de Courtenay Comes Devoniæ implacitet coram vobis in Banco prædicto Antonium de Lucy de eo quod ipse permittat præfatum Comitem præsentare idoneam personam ad ecclesiam de Brigham in comitatu Cumberlandiæ, idemque Antonius pro ostensione juris sui in placito illo respondisset et dixisset quod dominus Edwardus nuper Rex Angliæ pater noster per cartam suam quam coram vobis protulit dedit et concessit eidem Antonio honorem de Cokermuthe cum feodis et advocationibus eidem honori spectantibus, ad quem honorem prædictam advocationem asseruit pertinere, de quo qui-

[1] The writ to which reference is made at p. 45, and which is enrolled on the *Placita de Banco*, Hil. 13 Edw. III. Ro. 331 d.

A.D. 1338. Anthony is seised in form aforesaid, and so it belongs of right to him, and not to the aforesaid Earl, to present to the said church; and the aforesaid Earl has alleged against the same Anthony that he has not declared his *ostensio*, that is to say whether that advowson appertains to the dignity which is signified by that word honour (as honour is a word of dignity) or to the chief manor of that honour or to any manor or freehold which is part of that honour, or to the honour in gross, whereby the aforesaid Earl did not understand that without a *declaratio* he had any need to answer the same Anthony, inasmuch as his *ostensio* was uncertain and of manifold interpretation; and the said Earl has said that if it should appear to you that the *ostensio* of the same Anthony without any other *declaratio* was sufficient in this behalf he was ready to answer over; and the aforesaid Anthony has to this expressly answered that he would not declare his *ostensio* aforesaid in any other manner or say anything more in this behalf; and it has appeared to you that the *demonstratio* of the aforesaid Anthony was sufficient in the case aforesaid without any other *declaratio*; and thus it was said by you to the same Earl that he should answer over; and now on the part of the same Earl grievously complaining it is shown to us that although his exceptions and allegations put forward in the plea aforesaid may much avail him if they should be enrolled, and he has earnestly prayed you that you would cause them to be enrolled or a bill thereof to be made for him under your seals or the seal of one of you, as the custom is, you nevertheless have hitherto refused and still refuse to cause them to be enrolled or to make a bill thereof for him, to the great loss and injury of the same Earl and to the manifest danger of disinheriting him; wherefore it has been besought of us that we would command the premises to be done, as is fitting; we will that what is right and agreeable to reason be done to the same Earl as to others who plead in our Courts; we command you, as before we have commanded you, that, if it have been proceeded and alleged in such manner before you, then you cause the exceptions and allegations aforesaid to be enrolled or a bill thereof to be made for him and sealed under your seals or the seal of one of you, and to be delivered to the same Earl or to his certain attorney in this behalf, as of right and according to the form of the Statute[1] in that case ordained ought to

[1] Westm. 2 (13 Edw. I.) c. 31.

dem honore idem Antonius in forma prædicta seisitus ex- A.D. 1338.
istit, sicque ad ipsum et non ad præfatum Comitem ad dictam ecclesiam de jure pertinet præsentare; ac præfatus Comes contra ipsum Antonium allegasset quod ipse ostensionem suam non declaravit utrum videlicet advocatio illa pertineat nobilitati quæ significatur per illud nomen honoris, cum honor sit nomen nobilitatis, an capitali manerio honoris illius seu alicui manerio vel libero tenemento quod sit pars illius honoris, vel grosso honori, per quod præfatus Comes non intendebat ipsum habere necesse eidem Antonio, eo quod ostensio sua incerta fuit et multipliciter intelligenda, absque declaratione respondere; dictusque Comes dixisset, quod si vobis videretur quod ostensio ipsius Antonii absque alia declaratione sufficiens esset in hac parte paratus fuit ulterius respondere; præfatusque Antonius ad hoc expresse respondisset quod ipse ostensionem suam prædictam alio modo declarare vel aliquid aliud dicere noluit in hac parte; vobisque visum esset quod demonstratio prædicti Antonii satis fuit sufficiens in casu prædicto absque aliqua alia declaratione; sicque per vos eidem Comiti dictum fuisset quod ulterius responderet; ac jam ex parte ipsius Comitis nobis sit graviter conquerendo monstratum quod licet exceptiones et allegationes suæ in placito prædicto præpositæ sibi multum valere possint si irrotularentur, ipseque cum instantia vos petierit ut eas irrotulari aut billam inde sibi sub sigillis vestris vel alicujus vestrum, prout moris est, fieri faceretis, vos tamen eas irrotulari seu billam inde sibi hucusque facere recusastis et adhuc recusatis, in ipsius Comitis damnum non modicum et gravamen ac exheredationis suæ periculum manifestum; per quod nobis est supplicatum ut præmissa fieri jubere velimus prout decet; Nos eidem Comiti, sicut cæteris in Curiis nostris placitantibus, volumus fieri quod est justum et consonum rationi, vobis mandamus sicut alias vobis mandavimus quod si tailter coram vobis sit processum et allegatum, tunc exceptiones et allegationes prædictas irrotulari vel sibi inde billam fieri et sub sigillis vestris vel alicujus vestrum sigillari, et eidem Comiti vel suo certo attornato in hac parte liberari faciatis, prout de jure et secundum formam statuti inde editi fuerit faciendum juxta tenorem alterius mandati nostri vobis prius

A.D. 1338. have been done according to the tenor of our other mandate thereupon previously directed to you; And if it should happen that there be found in any manner any defect in the plea or process aforesaid had before you, then that you cause that defect to be corrected and amended in due manner as you shall see that it ought to be done of right and according to the law and custom of our realm, before further proceeding be had or judgment thereupon be given, so that neither party be prejudiced in this behalf; And if there should be any cause wherefore you ought not to do the premises, then that you certify us of that cause distinctly and openly under your seals or the seal of one of you, without delay, in our Chancery, remitting to us this writ. Witness Edward Duke of Cornwall and Earl of Chester, our most beloved son, Guardian of England, at Westminster, the sixth day of February in the thirteenth year of our reign. And, by reason of this writ, the reasons and allegations whereof mention is made in this writ are enrolled upon the principal plea, to wit in the term of Saint Michael last, Roll 118.

Replevin. (18.) § In a Replevin upon a writ of second deliverance the plaintiff was nonsuited, and *Stouford* prayed that the Return should not be adjudged [ir]replevisable, because he said that the Court was not apprised whether the distress was for service in arrear or not, and if not, the action was at common law; for the Statute[1] provides only for cases in which distress is made for service in arrear, because the general words of the Statute are at the end. And SCHARDELOWE said that inasmuch as the plaintiff had sued a writ out of the rolls he brought himself within the statute &c.

Dower. (19.) § Walter le Taverner of Newark and his wife brought a writ of Dower against several persons, so that J. vouched himself and his brother Thomas, and gave for a cause that the land was partible, which cause was adjudged to be null if he did not say anything more, because in that case he would have only an aid-prayer. And then he showed a cause by a feoffment. And then

[1] Westminster the Second (13 Ed. I.) c. 2.

inde directi; Et, si contigerit defectum aliquem in placito seu processu prædicto coram vobis habito aliqualiter inveniri, tunc defectum illum, antequam ulterius procedatur vel judicium inde reddatur, quatenus de jure et secundum legem et consuetudinem regni nostri, ita quod neutri parti in hac parte præjudicetur, fore videritis faciendum, modo debito corrigi et emendari faciatis; Et si causa subfuerit quare præmissa facere non debeatis, tunc nos in Cancellaria nostra de causa illa sub sigillis vestris vel alicujus vestrum reddatis distincte et aperte sine dilatione certiores, hoc breve nobis remittentes. Teste Edwardo Duce Cornubiæ et Comite Cestriæ filio nostro carissimo, Custode Angliæ, apud Westmonasterium, vj die Februarii anno regni nostri tertiodecimo. Prætextu cujus brevis rationes et allegationes de quibus in brevi isto fit mentio irrotulantur super placito principali, videlicet termino Sancti Michaelis ultimo, Rotulo cxviij. A.D. 1338.

(18.) § En un *Replegiari* a un bref *De secunda deliberatione* le pleintif fut noun siwi, et *Stouf.* pria retourn ne fut pas agarde replevissable pur ceo qil dit qe la court ne fut pas apris la quel la destresse fut pur service arere ou noun, et si noun il est a la comune ley, qare lestatut ne parle mes la ou destresse est fet pur service arere, *quia statutum est generale in fine.* Et SCHARD. dit en taunt qil avoit siwi bref hors des roules il se mist en cas destatut &c. Replegiari.

(19.) § Walter le Taverner de Newerk et sa femme porterent bref de dower vers plusours, issint qe J. voucha luy mesme et Thomas soun frere, et dona par cause qe la tere fut departable, quel cause fut ajugge nul sil ne deist plus, pur ceo qe la navereit il mes un eyde prier. Et pus moustra cause par feffement. Et Dower. [Fitz. *Voucher*, 113.]

A.D. 1338. as to parcel the voucher stood. And afterwards one, as to a mill and land, demanded the view, and the demandants said that he entered by the husband. Wherefore the tenant, as to the whole of the land, vouched, and as to the mill said he did not enter by the husband. And because he had taken upon himself an admission as to parcel, inasmuch as he vouched, and as to the rest had denied the entry, it is an intendment of law that he is apprised &c.; wherefore it was said that he should not have the view.

Elegit. (20.) § A man sued an *Elegit* out of a recognizance; and the extent was returned by the sheriff, who had not returned that he had made livery but only extent &c. And the party sued a *Scire facias*, and his writ was not served; wherefore an *alias* writ was granted, because the Court was not apprised that livery was made before; for if it was, the party will be received to aver it when he shall come at his day; and notwithstanding this &c.

Mortdancestor. (21.) § Upon a Mortdancestor for meadow and rent, the tenant as to the meadow and a messuage said that he held them by lease from the demandant (the reversion being to the demandant) &c. and demanded judgment whether an assise &c.; and as to the tenancy of one messuage that it was *hors de son fee* &c.; judgment whether without a specialty &c.—*Parning* wished to have driven him at the commencement to have said whether the lease was made after the death of the ancestor or not; and he could not. And then he offered to aver that since the death of his ancestor the tenant had nothing by lease from him &c.—SCHARDELOWE said that he should not be received thereto if he

puis de parcel le voucher estut. Et pus un qaunt a un molyn et terre demanda la vewe, et les demandantz disoient qil entra par soun baroun. [Par quei le tenaunt quaunt a tut la terre voucha, et quaunt al molyn il dit qil nentra pas par soun baroun.][1] Et pus pur ceo qil avoit enpris sour luy conisaunce[2] de parcel en taunt com il voucha, et del remenant dedit lentre,[3] la ley entent qil est apris &c.; par quei dit fut qil naveroit pas la vewe. A.D. 1338. [Fitz. *View*, 99.]

(20.) § Un homme siwist un *Elegit* hors dune reconisaunce; et lestent retourne par le vicounte, qi[4] navoit pas retourne qil navoit fet livere mes soulement estent &c. Et la partie siwit un *Scire facias*, et soun bref nient servy; par quei un *sicut alias* fut graunte, pur ceo qe la court ne fut pas apris qe la livere fut fait devaunt; qar sil fut, la partie serra resceu daverer le qaunt il vendra[5] a soun jour; *et hoc non obstante* &c. Elegit. [Fitz. *Scire facias*, 117.]

(21.) § En un mortdancestre de pree et de rente le tenaunt qaunt al pree et mies dit qil les tient de son[6] lees &c. la reversion a luy &c., et demanda jugement si assise &c.; et qaunt al tenant del un mies qe ceo fut hors de soun fee &c., jugement si saunz especialte &c.—*Parn.* luy voleit aver chace a comencement daver dit le quel lees se fist pus le mort dancestre ou noun; *et non potuit* Et pus tendi daverer qe pus la mort soun auncestre il navoit rien de soun lees &c.—SCHAR. dit qil ne serra pas resceu sil ne voleit conustre le Mordancester. [12 Li. Ass. 38; Fitz. *Barre*, 278.]

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[1] The sentence between brackets is not in 16560.

[2] This reading is from Fitz. In 16560 the words de parcel coniseit lautre, and in 25184 the words de parcel coniseit are substituted for conisaunce; and the words de parcel before the word en do not occur in 25184.

[3] lentre is from Fitz. It is not in the MSS.

[4] 16560 qil.

[5] 25184 vodra.

[6] 25184, du, instead of de son.

A.D. 1338. would not admit the lease and say that his ancestor died seised afterwards.—And the lease was traversed by the demandant, and yet the tenant did not show any deed. And as to the rent the demandant said that he who pleaded the plea was tenant of the rent, and therefore the plea did not lie in his mouth.—And so note.

Note. (22.) § In a plea of land a release was found false where witnesses were named; and the COURT would not cancel the deed. And it did well. Sir G. Le Scrope did otherwise.

Replevin. (23.) § In a Replevin where the defendant avowed the distress for the cause that he was made Collector of the Fifteenth &c., and did not show a warrant, whereupon the plaintiff demanded judgment whether he ought to be received to that avowry without a specialty, it was said that he was Sub-collector and had to make an oath, and that he would not have any other warrant.—SCHARSHULLE said that he could not by law be driven to act in that capacity without a special warrant, and that if he were arrested on that account he would have a writ of False Imprisonment.

Voucher. (24.) § A man in the bishopric of Durham vouched another in the county of York; wherefore the record was sent into the Bench &c. And the record came, and the COURT said that it could make no process inasmuch as the plea was without day; but it was said that if the plea had been rendered entire, it would have been good, and then process might have been made; but now it is not a record, inasmuch as judgment was not given &c.

Formedon. (25.) § Two sisters brought a writ of Formedon, where the tenant pleaded to the action; and the writ was for

lees et dire qe soun auncestre morust seisi pus.—Et le lees fut traverse par le demandant, et unquore le tenaunt moustra nul fait. Et qaunt a la rente le demandant dit qe celuy qe pleda le plee fut tenaunt de la rente, par quei le plee ne gist poynt en sa bouche. *Et sic nota.* A.D. 1338. [Fitz. *Hors de son Fee*, 30.]

(22.) § En plee de tere un relesse[1] fut trove faux ou tesmoignes furent nomez; et la COURT ne voleit pas dampner le fet. *Et bene fecit. Secus fecit* Mounsire G. Lescrope.[2] Nota. [Fitz. *Jugement*, 164.]

(23.) § En un *Replegiari* ou le defendant avowa la destresse par cause qil fut fait collectour de la xv^e &c., et ne moustra mye garrant,[3] de quei le pleyntif demanda jugement si saunz especialte il devereit a cel avowerie estre resceu, et dit fut qil serreit southcolectour et freit serment et autre garrant navereit il.—SCHAR. dit qil ne serra mye par ley chace a ceo faire saunz garrant especial, et sil fut pris pur cel cause il avereit bref[4] denprisonement. Replegiari.

(24.) § Un homme en levesche de Duresme voucha un autre en le counte Deverwyk, par quei le recorde fut maunde en baunk &c.[5] Et le record vynt, et la COURT dit qele ne pout nul proces faire en taunt come le plee[6] fut saunz jour; mes dit fut si le plee ust este [rendu tout, ust este bon, et donqes proces puit aver estre fait][7]; mes ore nest pas recorde en taunt come jugement ne fut pas rendu &c. Voucher. [Fitz. *Voucher*, 115.]

(25.) § Deux soers porterent bref de fourme de doun, ou le tenant pleda al accion; et le bref fut des Fourme de doun.

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[1] 16560, roule.

[2] See Year Books 11 & 12 Edw. 3, pp. 4–5.

[3] garrant is in 16560, but not in 25184.

[4] bref is in 16560, but not in 25184.

[5] So in Fitz.; in the MSS. are substituted for &c. the words et sil ne feist qil ne fut devaunt le Roy.

[6] So in Fitz.; MSS., proces.

[7] The words between brackets have been supplied from Fitz.; in the MSS. the word bon is substituted for them.

A.D. 1338. tenements in "Hogheland." And at another day the process was continued "Hogeland," so that in every place there was only one h; and the writ had, including that between the g &c. a double h; and because they both signified the same word, the writ was held good. And afterwards the Inquest was ready to pass; and the tenant said that one of the demandants had taken a husband while the plea was pending; and he was put to say whether she took a husband since the last continuance; and the demandant offered to aver that she did not; and the other side said that this could not be an issue without saying whether she was sole or covert, for no other issue is triable in this Court.—And *Trewith* said in case, after default made, the tenant plead a release bearing no date, to show that the demandant released after the default, the demandant will not have any issue but *Non est factum.* And, notwithstanding this, the COURT took the issue that she did not take a husband since the last continuance. And the tenant said that this was only a plea to the writ, and that it could not sever the action, wherefore this plea was wholly against the two, so that they ought not to take the inquest as to a moiety in respect of the other sister.—And then SCHARDELOWE said that if the writ was false on the day of the purchase of the writ, it would be wholly so on account of the one; but if the writ was good as to the two on the day of the purchase of the writ, then by the act of one the writ would not abate except as to herself; for if she would admit the act, and though the other would admit it, this would not even then be the case. Wherefore they took the inquest in respect of a moiety as to the one; and it was put off for default of jurors; and the *Venire facias* issued at the suit of the other against the tenant for the other moiety.—And so note.

Waste. (26.) § In a writ of Waste it was supposed that the tenant held for term of life by lease from the grandfather &c. The tenant pleaded that the grandfather

tenementz en Hogheland[1]; et a un autre jour le pro- A.D. 1338.
ces fut continue Hogeland,[2] issint qen nul lieu il navoit qun h; entre le g &c., et le bref double h; et pur ceo qil furent dune voyce, le bref fut agarde bon. Et pus lenquest fut prest a passer; et le tenaunt dit qune des demandantz avoit pris baroun pendaunt le [Fitz. *Briefe*, 258.]
plee &c.; et fut mys a dire le quel ele prist baroun pus la dreyn continuaunce; et le demandant tendy daverer qe noun; et lautre dit qe ceo ne fut pas issue saunz dire sole ou covert; qare autre issue nest pas triable en cest court.—Et *Trew.* dit qe apres un defaut fet le tenant plede relees qe ne porte date qe le demandant relessa pus la defaute, demandant navera autre issue mes nient soun feat. *Et hoc non obstante* la COURT prist lissue qele ne prist pas baroun puis la dreyn continuance. Et le tenant dit qe ceo ne fut mes plee al bref qe ne poet severer laccion, par quei ceo plee fut a tut vers les deux, issint qil ne deveront pas prendre enqueste de la moyte vers lautre.—Et pus SCH. dit qe si le bref fut faux jour de bref purchace [il serreit a tut par counte del un; mes si le bref fut bon vers les deux jour de bref purchace,][3] par le fait lun le bref nabatereit pas mes vers luy mesme; qar si ele voleit conustre, le bien lautre voleit,[4] par taunt [ne la serreit pas].[3] Par quey pristerent lenqueste de la moyte vers lautre, qe remist pur defaute de jurours; et le *Venire facias* vers le tenaunt a la sute lautre de lautre moyte.—*Et sic nota.*

(26.) § En bref de Wast le bref supposa qe le tenant Wast.
tient a terme de vie de lees laiel &c. Le tenant pleda qe laiel graunta la reversion a pere le pleyntif par fin,

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[1] 25184 Hoghland.

[2] 25184 Hoghland.

[3] The words between brackets are not in 25184.

[4] voleit is not in 16560.

A.D. 1338. granted the reversion to the plaintiff's father by a fine, and demanded judgment of the writ; but he did not abide judgment. And then the tenant pleaded that he had recovered a third part; judgment of the writ. And as to the rest he answered that no waste was committed; for in this case that judgment went to the writ as a whole, because it preceded the purchase of the writ, although execution was sued after, &c.

Dower. (27.) § Upon a writ of Dower the tenant alleged that one whose estate he had had recovered by an assise against the demandant herself and another, and that the estate of the husband was intermediate between the disseisin and the recovery; judgment whether she ought to have dower of such an estate. And she objected that he was a stranger to the record; and then she passed &c.—*Trewith* said, Whereas he has said that one R., whose estate &c., recovered, he does not allege that we were tenants; and whereas he has said that the estate of our husband was intermediate, we tell you that one W. was seised and died seised, and devised to our husband in fee simple, by which devise our husband was seised, before which devise R., who, he says, recovered, never had anything; ready &c. — *Gayneford* demanded judgment, since she did not show that her husband was seised before the seisin on which R. recovered by the assise; and he demanded judgment.—And the COURT put the demandant to answer. And she said that W. devised as above, and that after his death R. abated, claiming to be his heir, and our husband by reason of the devise, because the tenements &c., ousted him; and he has admitted the seisin; judgment.—*Gayneford.* We tell you that her husband and others against whom the assise was brought disseised R. whose estate &c. so that the estate which her husband had was such &c., without this that he ever had any other estate; ready &c.; and the disseisin was found, and thereupon judgment was given, which judgment remained in force; wherefore we demand judg-

et demanda jugement de bref; mes il ne demora pas. A.D. 1338.
Et pus pleda le tenant qil avoit recoveri la terce partie; jugement de bref. Et respondy de remenant qe nul wast fait; qar si cel jugement fut a tut le bref la ou il fut devant le bref purchace, coment qe lexecucion fut suy pus &c.

(27.) § En un bref de dower le tenant alleggea qe un qi estat il ad avoit recoveri par assise vers mesme celuy et autre, et lestat le baroun fut meen par entre la disseisine et le recoverir; jugement si de tiel estat deyve dowere aver. Et ele challengea de ceo qil fut estraunge al record, et pus passa &c.—*Trew.* dit, La ou il ad dit qe un R., qi estat &c., recoveri, il nallege pas qe nous sumes tenantz; et la ou il ad dit qe lestat nostre baroun fut meen, nous vous dioms qun W. fut seisi et morust seisi, et devisa a nostre baroun en fee symple, par quel devise[1] nostre baroun fut seisi, devaunt quel devise[1] R., qil dit qe recoveri, navoit unqes rien; prest &c.—*Gayn.* demanda jugement de pus qe ele ne moustra pas qe soun baroun fut seisi devaunt la seisine de la quele il recoveri par assise, et demanda jugement.—Et la COURT myst le demandant a faire respouns, qe dit qe W. devisa *ut supra*, ou apres la mort R. abati en clamant estre heir a luy, et nostre baroun par le devise,[2] pur ceo qe les tenementz &c., luy ousta; et seisine ad il comu; jugement.—*Gayn.* Nous vous dioms qe soun baroun et autres vers queux lassise fuit porte disseiserent R. qi estat &c. issint qe lestat qe soun baroun avoit fut tel &c., saunz ceo qil navoit unqes autre estat; prest &c.; et la disseisine fut trove, et sur ceo jugement rendu, le quel jugement estut en

Dower.

[Fitz. *Dower*, 92.]

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[1] 25184 demise.
[2] 16560 demise.
[3] So in Fitz.; MSS., &c. ele, instead of lassise fuit.

A.D. 1338. ment.—*Parning.* Although he said that we were in the Assise he did not affirm that we were either disseisor or tenant, so we are a total stranger and our husband also; and he does not deny the devise, and he has admitted the seisin of our husband, which can not be understood as otherwise than by the devise and not by the disseisin; wherefore we demand judgment.—*Gayneford* did not dare to demur against that plea, but said that the estate of the husband was by disseisin, without this that W. devised, ready.—And on this they were at issue.

Entry ad terminum qui præteriit.

(28.) § A man brought a writ of Entry *ad terminum qui præteriit,* and supposed by his count that the tenant had not entry but after the lease which his ancestor made to Robert for a term which was passed.—The tenant, by *Trewith,* put forward a deed by which he said that the ancestor leased in fee to the same person to whom the demandant supposed the lease to be for a term, and whose estate the tenant had, and demanded judgment whether the demandant ought to be received to aver the lease for a term.—And then *Stouford* objected that he was a stranger to the deed, and afterwards said that nothing passed by the deed.—And *Trewith* demanded judgment since both sides were agreed as to the fact of a lease; and he put forward the deed of the ancestor which purported a lease in fee, which deed the demandant had admitted. Wherefore he shall not get to aver that nothing passed by the deed without showing a deed which purports a lease for a term.—*Stouford.* And we also demand judgment. Since you have pleaded this deed as showing that our ancestor leased in fee, when in fact nothing passed by this deed, our action stands good; and that we offer to aver, which averment you refuse; and we pray seisin of the land.—And both sides asked judgment, and the plea was entered.—SCHARDELOWE. He has supposed by his writ a lease made for a term, and you

sa force; par quei nous demandoms jugement.—*Parn.* Coment qil dit qe nous fumes en lassise il nafferma pas qe nous fumes disseisour ne tenant, issint tut estraunge et nostre baroun auxi; ne il ne dedit pas la devise,[1] ne la seisine nostre baroun il ad conu, quel ne put estre entendu mes par le devise[2] et nient par la disseisine; par quei nous demandoms jugement.—*Gaign.* nosa contre cel plee demorer, mes dit qe lestat le baroun fut par disseisine saunz ceo qe W.[3] devisa, prest &c. Et sur ceo a issue. A.D. 1338.

(28.) § Un homme porta bref dentre *ad terminum qui præteriit* et supposa par soun counte qe le tenant navoit entre si noun puis le lees qun son auncestre fist a Robert a terme qe passe est. Le tenant par *Trew.* mist avaunt fait par quel [il dit][4] qe launcestre lessa a mesme cely a qi il suppose le lees a terme en fee, qi estat il avoit, et demanda jugement sil devereit estre resceu daverer le lees a terme.—Et puis *Stou.* luy chalenga de ceo qil fut estraunge al fet, et pus dit qe rienz passa par le fet.—Et *Trew.* demanda jugement de pus qil fut a un [de][4] lees dune part et dautre; et il myst avaunt fet dauncestre qe tesmoigna le lees en fee, quel fet il ad conu. Par quei daverer qe rien ne passa par le fet saunz moustrer fet qe tesmoigne le lees a terme il navendra pas.—*Stou.* Et nous jugement. De pus qe vous avez[5] plede ceo fet par quel nostre auncestre dust aver lesse en fee, ou rien ne passa par ceo fait, nostre accion estey;[6] et cellatendoms daverer quel averement vous refusez; et prioms seisine de tere. —Et furent en jugement dune part et dautre, et le plee entre.—SCHAR. Il ad suppose par soun bref un lees fait a terme, et vous avez mys avaunt fet mesme

Entre ad terminum qui præteriit.

[Fitz. *Estoppel*, 176.]

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[1] Both MSS. demise.

[2] 16560 demise.

[3] MSS., R.

[4] The words between brackets are not in 25184.

[5] 25184 nous avoms, instead of vous avez.

[6] 16560 esteint.

A.D. 1338. have put forward a deed by the same ancestor which purports a lease in fee to the same person to whom he supposes that the lease was made for a term, which deed it is necessary that he should refute by his answer; now so far he is barred, unless he can show that in the deed the conditions are not all fulfilled which are necessary to the deed, and the tenant attains his purpose. But you have used that deed as being by way of feoffment, against which it would suffice either to show that livery of seisin was not made in such a manner that the remainder [beyond the term] passed by that deed (so that you make use of it as being of the nature of a feoffment, when in fact you were never seised) or to deny the deed.—*Parning.* He will have a plea to avoid the deed by a plea which is given to him by law; but when he supposes a lease for a term by the deed of his ancestor, and we admit the lease made by the ancestor but say that it was in fee and thereof show a deed, in this case it can not be understood, when he has admitted the deed, that nothing passed by the deed, if he do not show a deed which purports a lease for a term; and that he does not.—SCHARDELOWE. If I make a charter in fee simple to a man of my land without livery of seisin, and ten years afterwards I lease it to him for a term without a deed indented, after the term I shall have my action, please God.—And this was denied by *Parning* and *Trewith,* who said it was the alienor's own folly.—*Trewith.* If one make to my brother a charter in fee simple, and then make livery of the land to him in fee tail, and my brother die without heir of his body, and I enter as heir in fee simple, and the donor bring his writ of Formedon in the reverter, and I have the deed in fee, I shall bar him.—And this the other side denied.—SCHARDELOWE said that the case had occurred in an assise in the Common Bench before themselves, and no other estate was adjudged to have passed but an estate tail.—*Trewith.* Since we are agreed on both sides respecting the fact of

launcestre qe testmoigne le lees en fee a mesme cely A.D. 1338.
a qi il suppose a terme, a[1] quele fait il bosoigne qil, a respons, refute; en taunt est il mys hors ore sil ne put moustrer qe en le fet nest pas compris toutz les condicions qe afferent al fete; il a soun purpos. Et vous avez use cel fete par voie de feffement, ou il suffit a moustrer qe livere de seisine ne se fist pas issint qe le remeyndre passa par ceo fait, auxi avaunt com vous usez en nature de feffement nient seisi, ou daver[2] dedit le fait.—*Parn.* Il avera plee de voyder le fete par plee qe lui est done en ley; mes qaunt il suppose un lees au terme par le fete soun auncestre, et nous conussoms[2] le lees fait par launcestre mes dioms qe ceo fut de fee et de ceo moustroms fet ou il ne put estre entendu qaunt il ad conu le fet qe rien ne passa par le fait, sil ne moustre faite qe testmoigne le lees au terme, et ceo ne fait il pas.—SCHAR. Si jeo face un chartre symple a un homme de ma terre saunz liverer seisine, et pus [x. aunz][3] apres jeo luy lees au terme sanz fete endente, apres le terme jeo averay ma accion si Dieu plest.—Et ceo fut denie par *Parn.* et *Trew.* qe disoient qe ceo fut sa folie.—*Trew.* Si un homme face a moun frere chartre de fee symple et pus luy face livere de la tere en fee taille, et moert saunz heir de soun corps, et jeo entre com heir simple et le donour porte soun bref de fourme de doun en le reverti, et jay le fet de fee, jeo luy barrey.—*Et hoc negavit.*—SCH. dit qe ceo fut trove en un assise en la comune place devaunt eux mesmes, et autre estat ne fut ajuge mes fee taille. —*Trew.* Quant nous sumes a un du lees dun part et

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[1] 16560 et.

[2] In 25184 the words from daver dedit to conussoms are repeated.

[3] The words between brackets are not in 25184.

A.D. 1338. a lease, and the nature of it is in debate, and as to the nature we put forward a deed which he has admitted, he shall never get to avoid the deed &c. by pleading nonage, nor consequently to this averment which he has offered.—SCHARDELOWE denied this.—*Stouford.* Although I might not be received in the case which you put, that is because by my plea I give myself another action from my lease being made while I was under age, and the lease is there admitted in the form in which it is pleaded; but I say that by this deed nothing passed, so that the lease, as you state it, is denied; and even though we were to put forward an indenture purporting the term, it would be in vain, for it will be necessary to answer to that deed which you think to use against us without having regard to the indenture; wherefore though I may not be able to say that nothing passed, one cannot understand that there was a lease in fee.—And it was said that the practice of law formerly observed was that he should not have the averment.—But see &c.

Avowry. (29.) § A man avowed for the reason that one Adam held of him two messuages and two carucates of land by homage, fealty, and 10*s.* by the year, and that he was seised by Adam's hand; which Adam gave the same tenements to Walter de Stirklond and his heirs &c. to hold of the chief lord of the fee &c.; and for the fealty and the rent he avowed.—*Pole.* Whereas he avows because Adam held of him the two messuages and two carucates of land by the services of 10*s.*, we tell you that R. his ancestor gave the same tenements by the description of one messuage and one carucate of land to Adam Gernet, to hold of him and of his heirs by the services of 16*d.*, whereof those tenements in parcel of which the taking was made are a moiety. From Adam they descended to J., and from J. to J., which J. gave the same tenements to the grandfather of the avowant in fee, and the rest descended to Adam as son, who gave that moiety to Walter de Stirklond of whom the avowant

dautre et le maner est en debat, et de ceo mettoms avaunt fet quel il ad conu, il navendra jammes a voider le fet &c. deinz age, *nec, per consequens,* cest averement qil ad tendu. — SCHAR. le denia. — *Stouf.* Tut ne soy jeo en le cas ou vous mettes[1] resceu, ceo est pur ceo qe de moun plee jeo me doune autre accion de moun lees taunqe jeo fu deinz age, et le lees com il est plede est conu la; mes jeo die qe par cel fet rien ne passa, issint le lees tiel com vous ditez est dedit; et tut fut il qe nous mettoms[2] avaunt endenture a tesmoigner le terme il serreit en veyn, qar a cel fete quel vous biez a user vers nous covendra a respoundre saunz avoir regard al endenture; par quei jeo ne puis dire qe rien ne passa, homme ne put entendre qil i avoit lees en fee.—Et dit fut qe ceo fut cours de ley avant usee qil navera pas laverement.—*Sed vide* &c. A.D. 1338.

(29.) § Un homme avowa par resoun qun Adam tient de luy ij. mies et ij. carues[3] de terre par homage, fealte, et x. souz par an, et il seisi par sa mayn, le quel Adam mesmes les tenementz dona a Walter de de Stirklond et a ses heirs &c. a tener de chief seignur de fee &c.; et pur la fealte et la rente il avowe.—*Pole.* La ou il avowe pur ceo qe Adam tient de luy par les services de x.[4] souz les ij. mies et les ij. carues de tere, nous vous dioms qe R. son auncestre dona mesmes les tenementz par noun dun mies et dune carue de terre a Adam Gernet a tener de luy et de ses heirs par les services de xvj.[5] deners, dount ceux tenementz en parcel des queux la prise fut faite sount la moyte. De Adam descendirent a J., et de J. a J., le quel J. dona mesmes les tenementz al aiel lavowaunt en fee, et la remenant descendi a Adam come a fitz, le quel dona cel moyte a Wauter de Stirklond de qi il ad parlee en lavowerie Avowerie.

[1] 25184, nestes.
[2] So in Fitz.; MSS., vous meisez.
[3] 16560, acre.
[4] 25184, xx.
[5] 25184, vj.

A.D. 1338. has spoken in the avowry, and who gave it to his son in fee tail, with remainder in fee simple to the plaintiff, because &c.; and thus he is his tenant, and has often tendered the services before the day &c. and still does so; judgment whether upon any other &c. by attorney, when he avows for fealty in arrear.—*Quære.*—*Parning.* Whereas he has said that our ancestor enfeoffed one Adam our grandfather &c. (as above) of the entirety, and that from Adam it descended to J., and from J. to J., so that they have admitted that J. had the entirety, we tell you that also he died seised of the entirety, and from him it descended to Adam, and also that Adam enfeoffed Walter de Stirklond of the entirety; ready &c. — *Gayneford.* Whether it was a parcel in J.'s time or not is not an issue in this plea without answering whether the plaintiff has a moiety by the feoffment, as above, or the entirety. —SCHARSHULLE said that in that plea the quantity of services could in some manner be tried.—Then the issue was offered that J. did not enfeoff the avowant's grandfather; ready &c. And the COURT desired to consider of it.

Trespass. (30.) § A man sued a bill of Trespass against several persons for his beasts taken and his men beaten against the peace &c., where they pleaded Not guilty; and as to the battery they were found guilty; and as to the taking of the beasts it was found that they came in aid of one who had the seignory, and made the distress for services in arrear; and he who was the lord was not named. And thereupon SCOT came into the Common Bench, and asked the opinions of SCHARSHULLE, HILLARY, and ALDEBURGH, in pursuance of whose opinions the others gave judgment that the defendants should be convicted, because they pleaded Not guilty when they might have justified their act.—And so note that they could have pleaded that plea [of justification] wholly in right of another as to the taking of the beasts, by admitting the act as in a Replevin; and in that respect there is a want of similarity to the present case &c.

et le quel dona a soun fitz en fee taille, le remeyndere en fee simple a pleintif pur ceo qe &c., issint est il son tenant, et sovent luy ad tendu les services devaunt le jour, et unquore fet; jugement si sour autre &c. par attourne, la ou il avowe pur fealte arere.—*Quære.*—*Parn.* La ou il ad dit qe nostre auncestre enfeffa un Adam nostre aiel &c., *ut supra,* del enter et de Adam descendi a J., de J. a J., issint qils ount conu qe J. navoit lenter, nous vous dioms qe auxi enterement [morust il seisi, et de luy descendi a Adam, et][1] auxi enterement Adam enfeffa Walter de Stirklound; prest &c.—*Gaign.* Ceo nest pas issue en cest plee le quel il fut de parcel en temps J. ou noun, saunz respondre le quel le pleintif ad la moite par le feffement, *ut supra,* ou lenter.—SCHAR. dit qen cel plee la quauntite de services poet en asqune manere estre trie.—Pus lissue fut tendu qe J. nenfeffa pas son aiel; prest &c. Et la COURT se voleit aviser de ceo. A.D. 1338.

§ (30.) Un homme siwist une bille de trespas vers plusours de ses bestes pris et ses gentz battuz encontre la pees &c., la ou il plederent de ren coupable; et qaunt al baterie il furent trovez coupables; et qaunt al prise de bestes fut trove qil vyndrent en eide dune qe avoit seignurie et firent la destresse pur services arere; et celuy qe fut seignur ne fut pas nome.[2] Et sur ceo SCOT vynt en la comune place, et demanda avisement de SCH., HILLARY, et[3] ALD., et les autres, par lour avisement rendirent jugement qil furent atteintz pur ceo qils plederent de rien coupables la ou il poient aver justific lour fet.—*Et sic nota* qils poient aver plede ceo plee enterement dautre dreit de prise de bestes par conusance com en un Replegiari; *et ideo non simile ad casum &c.* Trespas. [Fitz. *Trespas,* 215.]

[1] The words between brackets are not in 25184.

[2] 25184, qe fut nomee, instead of ne fut pas nome.

[3] In 16560 there is no "et" after HILLARY, but an "et" after autres.

A.D. 1338. Plea of the Crown.

(31.) § In a plea of the Crown a man was arraigned for felony, who said he was a clerk, and the Ordinary would not claim him; and an inquest of office was taken, and he was found guilty; and SIR WILLIAM SCOT, with the assent of all the JUSTICES, adjudged that he should be hanged; and yet he was a clerk; but the Ordinary was directed by the Archbishop not to claim him because he had committed sacrilege. And so note.

Note.

(32.) § Note:—in a plea of land, to the *Distringas juratores* the sheriff answered that he had sent to the bailiff of the liberty, "who thus answered," and returned the issues; but he left out one who was named in the writ; so by judgment the *Non omittas* was awarded; and yet a sufficient number came.

Assise of Novel Disseisin.

(33.) § In an assise for a rent-charge, a woman who was a freeholder of parcel in dower pleaded that she was endowed of an estate prior to the charge, and she demanded judgment whether there ought to be an assise; and the plaintiff was by judgment put to answer that, though the consideration of the point was long pending. — SCHARSHULLE said that one might plead to defeat a charge for a time as well as to defeat it for ever. —And the plaintiff said that the charge began at an earlier time &c.—And the Assise was charged whether the rent began before the marriage. — And another pleaded, by bailiff, that, whereas the plaintiff put forward a deed to the effect that the rent was granted to be taken from the manor S., the manor of S. extends into S. and also into another vill, and he demanded judgment of the writ.—And the Assise was charged on that point; and they said that parcel was in another vill.— And they were asked whether it was demesne in the hand of the grantor at the time of the grant or not; the Assise said that it was. Wherefore the writ was abated. — And so note that although it had been found that services had been

(31.) § En plee de corone un homme fut arene de felonie, qe dit qil fut clerk, et Lordiner ne luy voleit pas chalenger; et enqueste fut prise doffice, et trove fut coupable; et SIRE WILLIAM SCOT, par assent de touz les JUSTICES, agarda qil fut pendu, et unqore il fut clerk; mes Lordiner fut comaunde par Lercevesqe qil ne luy dust pas chalenger pur ceo qil avoit fait sacrilege. *Et sic nota.* A.D. 1338. Corona. [12 Li. Ass. 39; Fitz. *Corone*, 120.]

(32.) § Nota en plee de terre, al *Distringas juratores* le vicounte respondi qil maunda al baillif de la fraunchise, *qui sic respondit*, et retourna les issuz; mes il entrelessa un qe fut nome en le bref; *ideo* par agard le *Non omittas;* et unqore ils vyndrent assez. Nota. [Fitz. *Proses*, 30.]

(33.) § En assise de rente charge un femme frank tenant de parcel en dowere pleda qele fut dowe de plus haut qe la charge fut, et demanda jugement si assise dust estre; et le pleyntif fut mys a respondre a ceo par agarde; et unquore pendaunt longement cel avisement.—SCHAR. dit qe homme plede auxi bien a defaire un charge pur un temps com a defaire le a touz jours. —Et le pleyntif dit qe la charge comencea deigne temps, &c.—Et lassise charge le quel la rente comencea devaunt les esposailles.—Et un autre pleda par baillif qe la ou le pleintif mist avaunt fet qe voleit qe la rente fut graunte a prendre du maner S., qe le maner de S. sestent en S. et en autre ville, et demanda jugement de bref.—Et lassise charge de ceo, qe disoient qe parcelle[1] fuit en autre ville.—Et demande fut le quel ceo fut demene qe fut en le mane le grantour a temps de graunte ou noun; lassise dit qe oil. Par quei le bref fut abatu.—*Et sic nota* qe tut ust il este trove qe les services ussent este en autre ville qe fut Assisa Novæ Dissei [12 Li. Ass. 40.] [Fitz. *Charge*, 12.]

[1] So in Li. Ass., and Fitz.; MSS., par ceo ag.

A.D. 1338. in another vill which was parcel of the manor, and were services at the time of the grant, yet thereby the writ would not abate unless that parcel was charged; and it could not be so except as having been in the grantor's hands as demesne.—*Quære* &c. whether you could maintain your writ if you did not plead that deed &c.

Dower. (34.) § Joan who was the wife of John de Carminowe brought a writ of Dower against a man and his wife, who said as to parcel that they held in dower, by a recovery had against the demandant's husband, of the endowment of one R. late the tenant's husband and father of the demandant's husband and of a right previously acquired, and demanded judgment &c. To which the demandant said that it could not be understood as a tenancy in dower.—*Stouford* said that what they pleaded was not in evidence, wherefore issue could not be taken upon it.—*Parning.* If a woman after the death of her husband be endowed of a manor, which is of her inheritance, in allowance &c., and die seised, her heir will have a Mortdancestor. — HILLARY. If a woman has a right to have the entirety and be endowed of the third part, she shall afterwards have a *Cui in vita* for the other two parts. — *Pole.* If she has recovered [the third part as dower] in this Court she will fail [in the *Cui in vita*].—*Parning.* Whereas she (the tenant) has said that her husband was seised higher up and that she holds in dower of the endowment by her husband higher up and by the assignment of the demandant's husband, we tell you that our husband enfeoffed her husband and her to have and to hold to them and the heirs of the husband, by which feoffment the wife continued such estate all her husband's lifetime and after the husband's death, she being of full age, until she devested herself in favour of the husband's heir; wherefore she (the demandant) demands judgment whether she (the tenant) ought to be received to say that she holds

parcel de maner et furent les services a temps de graunte, qe par taunt le bref nabatereit pas sil ne fut charge; et ceo ne pout estre, mes ceo qe[1] fut en la mayn le grantour com demene.—*Quære* &c. si vous pussez meyntener vostre bref si vous ne pledez cel fet &c. A.D. 1338.

(34.) § Johane qe fut la femme Johan de Carminuwe[2] porta bref de dowere vers un homme et sa femme, qe disoint quant a parcel qil tindrent en dower, par recoverir taille vers le baroun le demandant, [del dowement un R. jadis soun baroun pere le baroun le demandant][3] et dun eigne dreit deservȳ, et demanda jugement &c. A quei le demandant dit qe ceo ne put estre entendu a tenir en dowere.—*Stouf.* dit qe ceo qils disoient ne fut en evidence, par quei issu sur ceo ne put estre pris.—*Parn.* Si une femme apres la mort soun baroun soit dowe dun maner qest de soun heritage en alowaunce &c. et devie seisi, soun heir avera le Mordauncestre.—HILLARY. Si une femme ad dreit daver lentier et soit dowe de la terce partie, qele apres avera le *Cui in vita* de les deux parties.—*Pole.* Si ele recovere ceinz ele faudra.[4]—*Parn.* La ou ele ad dit qe son baroun fut seisi de plus haut et qel tient en dower del dowement son baroun de plus haut et del assignement le baroun la demandaunte, nous vous dioms qe nostre baroun enfeffa son baroun et luy a aver et a tener a eux et a les heirs le baroun, par quel feffement la feme tiel estat continua tut la vie le baroun, et apres la mort le baroun de plein age taunqe ele se demist al heir le baroun; par quei ele demande jugement si ele devereit estre resceu a dire qele tient en Dower.

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[1] 25184, ne.

[2] 25184, Johan Carmwe.

[3] The words between brackets are not in 25184.

[4] 25184, faundra.

A.D. 1338. in dower of an estate acquired higher up. — *Stouford.* Let us be then agreed that we held in dower on the day of the purchase of the writ.—*Parning.* You put us to answer whether you hold in dower of an estate acquired higher up, and to that we have pleaded that it can not be, in opposition to the deed which we have pleaded; and besides, our husband's seisin is admitted &c.—To that *Stouford* said that her (the tenant's) husband was seised at an earlier time than the demandant's husband was, and that by the assignment of the demandant's husband the tenant held in dower on the day of the purchase of the writ, without this that she had anything except as wife; ready &c.—*Parning.* Her estate was joint as we have said; ready &c.—And so to the country.—Note, by this plea, that a woman can hold in dower as against one who assigned it, and not as against one who has an action of dower on an estate lower down.

Replevin. (35.) § William de Twenge avowed a taking upon one Walter de Stirklond, for the reason that his father and his mother held so much land, as in right of his mother, of one M., by homage, and fealty, and suit, and escuage 18*d.* for it, as regardant to a moiety of the manor of K. in Kent, and the aforesaid M. was seised by the hand of the father as tenant by the curtesy of England; which M. granted the same services to M. and a moiety of the moiety of the manor aforesaid to Marmaduke father of William the present defendant in fee tail; by reason of which grant the plaintiff's father attorned for his fealty &c.; and, after the death of W.'s father, W. is now seised of the homage &c.; and for the suit and the escuage he avowed.—*Gayneford* said that he held by homage (as above) but not by suit and escuage, which neither he nor any of his ancestors ever did—and he stated the names of his grandfather, great-grandfather &c.; judgment whether by that seisin snapped up during a coverture or during the tenancy of a tenant by the curtesy of England

dower dun estat plus haut deservy. — *Stouf.* Seioms dounqes a un qe nous tenimez en dower jour de bref purchace. — *Parn.* Vous nous mettes a respondre le quel vous tenez en dower de plus haut estat deservy, et a ceo avoms plede qe ceo ne put estre countre le fet qe nous avoms plede; et ovesqe ceo, qe la seisine nostre baroun est conu &c. — A ceo la dit *Stouf.* qe son baroun fut seisi deigne temps qe le baroun le demandant ne fut, et qele del assignement le baroun le demandant tynt en dower jour de bref purchace, saunz ceo qele navoit rienz mes come femme; prest.— *Parn.* Son estat fut joint com nous avoms dit; prest. —*Et sic ad patriam.*—*Nota per istud placitum* qe femme[1] put tener en dowere vers celuy qe assigna, et nient vers celuy qe ad accion de dower de plus bas. A.D. 1338.

§ (35.) William de Twenge avowa une prise sour un Wauter de Stirklond, par la resoun qe soun pere et sa mere tyndrent taunt de tere, com del dreit sa mere, dun M., par homage et fealte et suyte et escuage xviij.*d.* pur ceo com regardant a la moite de maner de K. en Kent, et lavaunt dit M. fut seisi par mye la mayn le pere com tenant par ley Dengletere, la quel M. graunta mesmes les services a M. et la moite de la moyte del maner avauntdit a Marmeduk pere W. qore est defendant[2] sur fee taille, par quel graunt le pere le pleintif attourna de sa fealte &c., et apres la mort le pere W. qore est seisi del homage &c., et pur la sute et lescuage il avowa.—*Gayn.* dit qil tynt par homage *ut supra* saunz sute et escuage, qe luy ne nul de ses auncestres unqe firent:—et alleggea les nouns dael, besael &c.; jugement si par cel seisine happe[3] durant la coverture ou del tenant de ley Dengletere il put des- Replegiari.

[1] ne is inserted after femme in 16560.

[2] 16560, defet.

[3] 25184, appe.

A.D. 1338. he can avow the distress.—And afterwards he did not dare to abide judgment upon that; wherefore he denied the seisin and thereupon they were at issue.—And it was said that, if he had been willing to abide judgment, *Parning* and *Trewith* would have alleged another seisin higher up so as to affirm that of which they spoke in the avowry. — *Quære* whether they ought to have got to that. I think they ought not, since they could have taken that for title in the avowry. And so *quære* of this matter, and whether Stirklond's answer is sufficient. And I think it is &c.

Right of Wardship. § (36.) John de Gray brought a writ of Wardship against B., who vouched &c., and was put to show a cause; and he said that such an one was seised and leased. And J. demanded judgment whether without a specialty he ought to have the voucher. And then *Kelshulle* put forward a deed *gratis*; and the voucher stood.

Replevin. § (37.) John de P. complained that the Abbot of Conesby tortiously took his beasts &c. in G. in a place called Lategarthe.—*Trewith,* for the Abbot, avowed in Conesby, in a place called Almertoft, for fealty and rent in arrear.—*Gayneford.* You took my beasts in G. in a place called the Lategarthe, as above, (ready &c.,) and not in the vill.

tresse avower.—Et pus apres il nosa pas bien demorer sour cel; par quei il dedit la seisine, et sour ceo a issue.—Et dit fut qe sil voleit aver demore qe *Parn.* et *Trew.* voleient allegger un autre seisine de plus haut daver afferme cel de quel il parlerent en lavowerie.—*Quære* sil dussent aver avenu. *Credo quod non,* qaunt il pout aver pris ceo pur title en lavowerie. *Et ideo quære de ista materia* et del respons S. sil soit suffisaunt. *Et credo quod sic &c.*

A.D. 1338. [Fitz. *Avowre,* 104.]

(36.) § John de Gray porta bref de garde vers B. qe voucha &c., et fut mys a moustrer cause; et dit qun tiel fut seisi et lessa. Et[1] J. demanda jugement si saunz especialte il dust le voucher aver. Et pus *Kels.* de gree myst avaunt fet, et le voucher estut &c.

Droit de Garde.

(37.) § Johan de P. se pleint qe labbe de Conesby atort prist ses avers &c. en G. en un lieu qest appele Lategarthe.—*Trew.* pur labbe, avowa en Conesby en un lieu qest apele Almertoft pur fealte et rente arere.—*Gayn.* Vous pristes mes bestes en G. en un lieu qest apele le[2] L. *ut supra,* prest &c., et nient en la ville.

Replegiari.

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[1] 25184, a.

[2] le is not in 16560.

HILARY TERM

IN THE THIRTEENTH YEAR OF
THE REIGN OF KING EDWARD THE THIRD
AFTER THE CONQUEST.

HILARY TERM IN THE THIRTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

A.D. 1338–9. Entry sur Disseisin.

(1.) A. brought a writ of Entry *sur disseisin* against B. who traversed the point of the writ, wherefore Inquest was joined, and the *Nisi prius* was granted at Stamford on Friday next before the Feast of Saint Michael in the tenth year, at which day he made default and the default was recorded in the Bench, wherefore the Petit *Cape* issued, and thereupon the process was continued until now, at the Octaves of Saint Hilary, the demandant and the tenant came, and the demandant held to the default committed in the country. — *Gayneford.* On the Wednesday next before the Friday mentioned we were at Lincoln travelling towards Stamford to save our day on that Friday, and at the suit of one G., de T. who sued a plaint of trespass against us before the Mayor and bailiffs of the same town we were taken, and afterwards, upon a statute merchant for a certain sum of money made in favour of G., we were detained in prison that same Wednesday and until our day was passed; wherefore you cannot hold to that default.—*Stouford.* He alleges the cause of the taking to have been through suit made in a plaint of trespass which cannot warrant the taking.—*Pole.* Yes, it can by custom of the city, for there and in London, if he have nothing whereof to be attached, he shall be attached by the body.—Scot. Even though he had been imprisoned without cause yet he would be excused in respect

DE TERMINO HILLARII ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU TERTIO-DECIMO.[1]

A.D. 1338–9. Entre sour disseisine.

(1.)[2] A. porta bref dentre sour disseisine vers B. qe traversa le point de bref, par quei enquest se joint, et le *Nisi prius* fut graunte a Stanford Vendredy prochein devaunt la feste Seint Michel lan xme, a quel jour il fit defaute, et la defaute recorde en Baunk, par quei le Petit *Cape* issit et sour ceo le proces continue taunqe ore a Utaves de Seint Hillary qe le demandaunt et le tenaunt vindrent, et le demandaunt prist a la defaute fait en pais.—*Gaign.* Le Meskerdy procheyn devaunt cest Vendredy nous fumes a Nicole en chiminaunt vers Stanford pur sauver nostre jour cele Venderdy, et a la sute un G. de T. qe suyst un pleynte vers nous de trespas devaunt le Maire et les baillifs de mesme la ville nous fumes pris, et peus par un statut marchaunt de certeinz deners fet a G. nous fumes detenuz en prisone mesme cel Meskerdy et taunt qe le jour fut passe; par quei a cele defaute ne poiez prendre.—*Stouf.* Il allegge la cause delenprise par seute fet en un pleinte de trespas qe ne put pas garrantir lempris.—*Pole.* Si put par usage de la cite, qar illoeqs et en Loundres, sil neit rien dount estre attache, il serra attache par le corps.—SCOT. Tut fut il enprisone saunz cause unqore il serreit excuse de cele defaute.

[1] The reports of this Term are from the Additional MSS. in the British Museum numbered respectively 16560 and 25184, from the Temple MS., and from the Lincoln's Inn MS.

[2] From 16560 alone as far as the point at which the larger type ends.

A.D. 1338-9.

of this default. And to this the COURT agreed.—*Stouford* (rehearsing the imprisonment as stated by *Gayneford* above) said:—It is very true that there was such a statute for that same sum of money payable on that same Wednesday on which he alleges that he was at Lincoln; and we tell you that this suit was made by collusion between him and G. in order to give a warrant and a cause to the Mayor to arrest him by his body (if he would) in the town, in order to excuse the default which we lay upon him; so, you were at large and not imprisoned except at your own will; judgment whether by reason of this statute you can save the default.—*Gayneford.* We tell you that through the attachment in the plea of trespass, and after the statute, we were detained the whole time whereof we have spoken until we had made satisfaction in respect of the statute and pleaded to the Inquest in the plea of trespass. And inasmuch as we are brought into Court to answer to the default, and we have answered to it by reason of the imprisonment, which you have admitted, we pray judgment how we ought to depart. —STONORE. If this suit cannot be continued and allowed, you will gain your purpose, and the writ will abate, and so on with respect to each in particular.—*Parning.* That statute was made by covinous consent between him and G. de T.; ready &c.—*Pole.* The motives and intention of man lie only in the heart of man, whereof one cannot have cognisance; judgment whether we have any need to answer to any averment on such a point.—SCHARSHULLE. In this way he alleges conspiracy, and still it lies in averment to the country. —*Pole.* We do not plead that the averment is not receivable, but that we have no need to answer; and if you see cause we will answer sufficiently.—BASSET to *Parning.* To such a plea cause has been seen [to require an answer].—And he said, as above;—so at large and not imprisoned against his will &c.— The collusion

Et ad hoc concordavit CURIA.—*Stouf.*, reherceaunt lenprisonement, *ut supra per Gayn. dictum fuit*, Bien est verite qe tiel estatut fut de mesme la sume a payer mesme le Meskerdy qil allegge soun estre a Nicole; et vous dioms qe cel sute fut fet par collusion entre luy et G. a donner garrant et cause al Meyr de luy arrester par le corps sil vousist en la ville pur excuser la defaute qe nous luy sourmettoms; issint fustes a large et ne mye enprisone forsqe a vostre volunte; jugement si par cause de cel estatut duissez[1] la defaute sauver.—*Gayn.* Nous vous dioms qe par lattachement en le plee de trespas, et peus le statut, nous fumes detenuz tut le temps qe nous avoms parle taunqe nous aveioms fait gree de lestatut et plede a lenqueste en le plee de trespas. Et desicome nous sumes mene en court de respondre a la defaute et a ceo avoms respondu par cause del enprisonement quel vous avez conu, jugement coment nous devoms departir.—STON. Si cest sut y ne ce[2] peuse estre continue et allowe, vous averez vostre purpos, et le bref abatera, *et sic de singulis.*—*Parn.* Cel estatut fut fet par consentement entre luy et G. de T.; prest &c.—*Pole.* Concent et volunte de homme chiet soulement en qore dome, de qui homme ne put avoir conusaunce; jugement si anul averement sour tiel point eioms mestere a respondre. —SCH. Issi fait conspiracye, et unquore il chiet en averement de pais.—*Pole.* Nous ne pledoms pas qe laverement nest pas resseyvable mes qe nous navoms mestere a respondre; et si vous veiez cause nous respondroms assez.—BASS. a *Par.* al tel plee fut veu cause.—Et dit *ut supra*, issint a large et nient enprisone countre soun gree, &c.—La collusion fut entre en

A.D. 1338-9.

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[1] MS. fuissez.

[2] MS. sutynece, as one word.

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was entered upon the roll.—And the other said that he was imprisoned against his will.—And the opposite side said the contrary.

Note: Præcipe quod reddat.

§ At the return of the Petit *Cape* the demandant held to the default.—*Gayneford.* By this default you can not take any advantage, for we were, four days before our day, attached on our way to the Court at N. in such a county for a trespass; and when we were arrested, one A. to whom we had made a recognizance upon a statute merchant, because the day of payment was past, showed the statute merchant to the Mayor of the town, and he detained us there in prison for that reason for the six following days until we had made satisfaction to the party &c.—*Parning.* You can not thereby save the default, for you made the statute by fraud and malice in order that you might be detained and thereby abate the writ; judgment.—*Pole.* Such covin and the motives that are in a man's heart can not be averred; and besides, when a man is in any place of his own free will he is not imprisoned; wherefore if your case were such, the general averment which is commonly used would serve your purpose, namely that we were at large.—SCHARSHULLE to *Pole.* Whether the issue be good or bad, he holds to it at his peril; and one may inquire whether a man slew another feloniously.—And because *Pole* did not dare to abide judgment, he took the issue that the tenant was taken and imprisoned against his will; ready &c.—And the other side said the contrary.

Account.

(2.) § John Ledece, executor of the will of R. de T., and W. de Dene and Peronetta, his wife, coexecutors with this same John of the will aforesaid, brought a writ of Account against J., the son of T. de M. the younger.—*Pole.* Whereas the writ is brought against us by the name of John the son of T. de M., we are the same person as he who is named plaintiff by the name of J. le Dece, and we do not understand that W. and P., who is herself an executrix, ought to be received to prosecute this writ.—*Stouford.* This Account was in action during the testator's own life, and the Ordinary cannot charge you before him by way of action in respect of that which

roule.—Et lautre dit qil fut enprisone countre soun gree. *Et alii e contra.* A.D. 1338–9.

§ Al[1] petit *Cape* retourne le demandant se prist a la defaute.—*Gayn.* Par ceste defaute ne poez avantage aver, qar nous fumes par iiij. jours devant nostre jour attache en chymynant vers la court a N. en tiel counte pur trespas, et qant nous fumes arrestu, un A. a qi nous avioms fait une reconisance sur estatut marchant, pur ceo qe le jour fust passe de la paye, moustra le statut marchant[2] a Mayre de la ville, et il nous detent la[3] en prisone par cele resone par vj. jours ensuauntz si la qe nous ussoms fait gree al partie &c.—*Parn.* Par tant ne poez la defaute sauver, qar vous feistes lestatut par fraude et malice issi qe vous puissez estre detenu, et par tant abatre le bref; jugement.—*Pole.* Tiele covyne et conscience qest en quor de home ne poet estre avere; et ovesqe ceo, qant homme est en ascun lieu par son gree il nest pas enprisone; par quei si vostre cas fust tiel, averement general et qe soleit estre use vous servireit saver qe alarge.—SCHAR. a *Pole.* Soit lissu bon ou malveis, il le tient a son peril; et homme poet enquere si homme felonousement occist un autre.—Et pur ceo qe[4] *Pole* nosa demurrer, il[5] prist lissu qil fust pris et enprisone encontre son gree; prest &c.—*Et alii e contra.*[6]

Nota: Præcipe quod reddat.

[Fitz. *Saver de Defaute*, 47.]

(2.)[7] § Johan Ledece, executour del testament R. de T., et W. de Dene et Peronette sa femme, coexecutours mesme celuy Johan del testament avaunt dit, porterent bref dacompte vers J. le fitz T. de M. le peune.—*Pole.* La ou le bref est porte vers nous par noun J. le fitz T. de M., nous sumes mesme la persone qest nome pleintif par noun J. le Dece et nentendoms mye qe W. et P. qe mesme executrice deive a cestuy bref estre resceu.—*Stouf.* Ceste acounte si fut en accion en la vie mesme testatour, ou de chose qest en accion en soun temps Lordiner ne vous put pas charger devaunt

De compoto.

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[1] This report of the case is from T., L., and 25184.

[2] marchant is not in 25184.

[3] la is not in 25184.

[4] qe is not in 25184.

[5] 25184, et.

[6] In L. are added the words "*Vide* "*finem istius placiti*, T. 13°. f°. "8°." See No. 18 in Trinity Term.

[7] From 16560 alone as far as the point at which the larger type ends.

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was a chose in action during the testator's life-time; wherefore the action must be saved in the King's Court, and we have no other means of recovery but this.—*Parning.* We could give an acquittance to a stranger to bar you of an Account; therefore it appears that we are quit of the Account as regards you.—*Trewith.* That is because by reason of such an acquittance you would be required to account for the money whereof the acquittance is given, and also as receiver of him to whom the acquittance is given, but, if the arrears are not in the same possession, then the Account is still in action.—SCHARDELOWE. If this exception were allowed, this action would fail, in which case there would be injustice.—HILLARY. That is regarding the folly of the testator as if he had only made J. de Ledece his executor, in which case perforce the action would fail.—SCHARDELOWE. An action fails, on the one hand, because a person does not wish to use it, and, on the other hand, because no one can use it; and if a man makes the receiver of his money his sole executor, no one could, in respect of what had been received by the latter, make use of an action after the testator's death; and that is regarding the testator himself as if he had made no second person his representative with the person who is bound to account; but in this case such folly cannot be surmised, for there is an executor in whose person the action is saved against the co-executor, since each of them represents the estate of the testator; wherefore, in this case it would be unreasonable to oust him from this action.—*Parning.* There is no injustice in either case even though the action of Account fail in this Court, for whether the receiver of money alone or he with others be made executor he shall always account before the Ordinary.—*Trewith.* Never in respect of that which was a chose in action during the life of the testator, but only of that which is in their posssession as executors, for that which was a chose in action during the life of the testator does not touch will or matrimony, wherefore a Prohibition would lie in such case. Besides,

luy par voye daccion; par quei il covent qe laccion soit sauve en la Court le Roy et altre recoverir navoms qe ceo cy.—*Parn.* Nous pussoms faire acquittaunce a estraunge de vous barrer dacompte; dounqes piert il qe nous sumes quite dacompte vers vous.—*Trew.* Cest pur ceo qe par cause de cel acquittaunce vous serrez charge dacompter de les deners dount acquitaunce est fait, et auxi come receivour de luy a qi lacqitaunce est fait, mes, si les arrerages ne sount mye en mesme possession, einz lacompte est unquore accion.—SCH. Si cest excepcion fut allowe, ceste accion perireyt, qar serreit meschef. — HILLARE. Ces t arestere a la folie le testatour come sil nust fait fors qe J. de Ledece soun executour, en quel cas a force laccion perireit. — SCH. Accion depiert en cas pur ceo qe homme ne la voet user, et en cas pur ceo qe nul la put user; et en cas si homme fet soulement son resceyvour de ses deners soun executour, nul de ceo resceite apres la mort le testatour put user accion; et ceo est de arestere al testatour mesme qe il ne ust mis altre en soun lieu ovesqe celuy qest oblige dacompter; mes en ceo cas tele folie ne put estre sourmys, qar il y ad executour en qi persone laccion est sauve vers le coexecutour, peus qe chesqune de eaux represente lestat le testatour; par quei en ceo cas il serreit countre resoun de luy ouster de cest accion. — *Parn.* Il ad nul meschef en lun cas ne en lautre tut deperge accion daccompte en ceste Court, qar, lequel qe le receyvour de deners soul ou il et altres soient fait executour, il acomptera tut temps devaunt Lordiner. — *Trew.* Jammes de chose qe feut en accion en la vie le testatour fors qe de chose qest en lour pocessioun come executours, qar ceo qe feut en accioun en la vie le testatour ne touche testament ne matrimoigne par quei la prohibucion giroit en tiel cas. Eestre ceo, si ceo fut ley qe accioun

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if it were law that an action of Account should be taken away in this Court in respect of the executor, and that he should account before the Ordinary, then it would follow that, if he who is liable to render an account as bailiff or receiver of the testator's money refuse the administration, I shall be without action, for, according to what you say, I cannot have it in this Court, nor shall I have any recovery before the Ordinary, for he cannot charge any one to account except the person to whom he has given the administration.—*Parning.* He can do so if one takes the administration upon himself; and, for instance, if one gives an acquittance after having refused the administration, he has thereby administered; for it is an intendment of law that there has been a receipt of the money whereof he has given acquittance; in the same manner when one is bound by his own deed in 10*l.*, to render an account either of money or of anything else, if he render not to the person who has received the administration the money, or the chattel, or the arrears, it is an intendment of law that he himself administers the money or the chattel, whatever it may be, by reason of which administration supposed by law he will be driven to account before the Ordinary; and in that place only will your recovery lie.—*Parning.* The plea which we plead here is properly to the jurisdiction.—SCHARDELOWE. You have pleaded to the action, and the plea cannot be taken to any other effect.—*Parning.* If tithes be demanded against me I shall plead to the jurisdiction, and it is to the action in this Court, &c.

Account.

§Account brought by three executors against one of themselves, so that one of them was both plaintiff and defendant; he was severed in the suit, and the two counted against him without mentioning the severance.—*Pole.* You see clearly how they are executors and demand an account against their co-executor for the time when he was the receiver of their testator, whereas such a writ does not lie between them; judgment whether to this writ they ought to be received.—*Trewith.* He has not denied the receipt; judgment.—*Parning.* The defendant might have released to another

dacompte serreit tollet en cest court pur le executour, et qil acountereit devaunt Lordiner, dounqes ensuyst qe, si celuy qest tenu dacompt rendre come baillif ou receyvour de deners le testatour refuse ladministracion, que jeo serray saunz accion, qar, a vostre dit, en ceste court jeo ne la puse avoir ne devaunt Lordinare jeo ne averay nul recoverir, qar il ne put charger nul homme dacompter fors qe celuy a qi il ad baille ladministracion.—*Parn.* Si put sil enprent ladministracion mesme, et com sil fait acquitaunce peus qil ad refuse ladministracion en taunt il ad administre, qar ley entend estre receut de deners de queux il ad fait acquitaunce; en mesme la manere qaunt il est oblige par soun fait en x. livres ou dacompte rendre de deners ou dautre chose, sil ne rend a celuy qe ad resceu ladministracion les deners, ou le chatel, ou les arrerages, ley entend qil administre mesme les deners ou le chatel, quele qe ceo soit, par resoun de quel administracioun de ley suppose il serra chace dacompter devaunt Lordinare; et en cele place soulement chierra vostre recoverir.[1]—*Parn.* Le plee qe nous pledoms si est proprement a la jurisdiccion.—Sch. Vous avez plede al accion, et le plee ne put estre pris a nul autre effect.—*Parn.* Si dimes soient demandez vers moy jeo plederay a la jurisdiccion, et cest al accion en cest court, &c.

A.D. 1338–9.

§ Acompte[2] porte par iij. executours vers un deux mesmes, issi qun deux fut pleintif et defendant; il fut severe en la suyte, et les deux conteront vers lui sanz faire mencion de la severance.—*Pole.* Vous veez ben coment ils sont executours et demandent acompte vers lour coexecutour de temps qil fust resceivour lour testatour, ou tiel bref ne gist pas entre eux; jugement si a ceo bref deivent estre resceuz.—*Trew.*[3] Il nad pas dedit le resceit; jugement.—*Parn.* Il purreit aver relesse a autre[4] acompte et dette et forclos

Acounte.

[Fitz. *Executours*, 91.]

[1] Something seems to be omitted here.

[2] This report of the case is from T., L., and 25184; in 25184 it begins thus:—Acompte pur iij. executours et un de eux fut defaut.

[3] T. Sch.

[4] 25184, as autres.

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the account and the debt, and precluded his co-executors from the action; and the testator has put him in the testator's place to do that which he and the Ordinary please, and he cannot account to them if he do not account to himself, which cannot be; and if he were found in arrear ought he to remain in custody? (intimating the negative). And if he were receiver &c. he should account before the Ordinary, and not here.—*Trewith.* One shall never account before the Ordinary for a chose in action; and the testator, if alive, would have this action in this Court; and through his death this action can not be tried and determined in Court Christian. — *Parning.* If an executor releases to a debtor he shall account for so much before the Ordinary; so here.—*Trewith.* The case is not similar; for when he releases or does anything whereby the debt is extinguished, he in a manner charges himself with having received so much.—*Parning.* If they had brought a writ against another, although he was severed, if the others had recovered and had died before execution sued out, he would have execution out of the judgment; wheeefore if this action were maintained he would recover against himself.—*Trewith.* In a Formedon, as between parceners, one shall demand against himself.—*Parning.* The suit and the action are severable; not so here.—And the suit is pending.—In this plea it was said by the Court and by the party that if an executor who has never administered make an aquittance he thereby becomes administrator, for then he intermeddles.

Entry.

(3.) § A writ of Entry *sur cui in vita* was brought against A. by one *Prœcipe,* and against a husband and his wife by another *Prœcipe* "into which they have not "entry but by G. who those to them demised, &c." A. made default after default. One J. came and said that he held the tenements for term of life by the demandant's own lease, and prayed to be received to defend his right. — *Stouford.* Our writ supposes his entry to be by G., and your prayer supposes his tenancy to be by our lease, and that is contrary to the supposition of the writ. — Schardelowe. What do you answer to that which he has said. — *Stouford.* If it seems to you that this may be, &c., notwithstanding that it is contrary to our writ, we will imparl. He came back, and said that J. held nothing of the demandant's lease; ready, &c. And thereupon seisin was awarded because

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ses executours daccion; et le testatour lad mys en son lieu de faire ceo qe lui pleist et Ordiner, et il ne poet acompter a eux si il nacompte a lui mesme, qe ne poet estre; et sil fust trove en arrerage duist il demurrer en garde? *quasi diceret non.* Et sil fust resceivour &c. il acomptera devant Lordiner, et noun pas icy. —*Trew.* Jammes nacontera homme devant Lordiner de chose qest en accion; et le testatour en sa vie avereit cest accion en ceste court; et par sa mort ceste accion ne poet estre trie et termine en Court Christiene.—*Parn.* Si un executour relest a un[1] dettour il acomptera de tiel sume[2] devant[3] Ordiner; auxi ycy.—*Tr. Non est simile;* qar quant il relest ou fait chose par quei qe la dette soit esteinte, il en manere se charge qil ad resceu tant.—*Parn.* Sils ussent porte un bref vers un autre, coment qil fust severe, si les autres ussent recoveri et ussent devie avaunt execucion suy,[4] il avereit execucion hors del jugement; par quei si ceste accion fust meyntenu il recovereit vers lui mesme.—*Tr.* En forme de doun en cas par entre parceners un demandra vers lui mesme.—*Parn.* La suyte et laccion est severable,[5] *non sic hic.*—*Et pendet.*—En ceo plee[6] fust dit par Court et par partie si[7] un executour qe unqes ne[8] aministra face acquitance,[9] par tant il devient administratour, qar donqés il se medle.

Entre denz les . . . ez.

(3.)[10] § Bref dentre sour le *Cui in vita* fut porte vers A. par un *Prœcipe*, et vers baroun et sa femme par un autre *Prœcipe* en les queux ils ne ount entre si noun par G. qe ceux lour lessa, &c. A. fit defaute apres defaute. Vint un J. et dit qil tient les tenementz a terme de vie de soun lees demene, et pria destre resceu a defendre soun dreit.—*Stouf.* Nostre bref suppose soun entre par G., et vostre priere suppose sa tenaunce par nostre lees, qest acontrarie de ceo.—Sch. Quei responez a soun dit?—*Stouf.* Si vous veez qe il pout estre, &c., nent contresteant qe il acontrare de nostre bref, nous enparleroms. Revynt et dit qe J.[11] ne tient rien de soun lees; prest. Et

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[1] In 25184 the word autre is inserted between un and dettour.

[2] T. cel come, instead of tiel sume.

[3] T. and L. al.

[4] suy is not in 25184.

[5] L. general.

[6] T. place.

[7] L. qe.

[8] ne is in 25184 only.

[9] In L., and T. the word et is inserted after acquitance.

[10] From 16560 alone as far as the point at which the larger type ends.

[11] MS. A.

A.D. 1338–9.

he who prayed [to be received] did not maintain his allegation. — *Gayneford* prayed thus with regard to the other [*Prœcipe*] :—whereas you suppose the lease to be made by the husband to the husband and the wife, the lease was made to the husband alone for the term of his life, and then he [the lessor] granted the reversion to us, upon which grant he [the tenant] attorned; therefore the reversion, &c.; and we pray &c.—*Stouford.* The lease was made to the husband and the wife, as our writ supposes; ready &c.—*Gayneford.* We pray to be received in defence of our right according to the form of the Statute,[1] for we shall not plead anything in abatement of the writ. — SCHARDELOWE. Receipt is given by the form of the Statute[1] when one prays to be received upon default of the tenant; and if it be as the demandant has offered to aver, then the husband is not sole tenant, and in that case he [who prays to be received] is not receivable.—And afterwards *Gayneford.* said, the husband is sole tenant; ready to verify, &c.—And the other side said the contrary.

Note: Entry.

§ A writ of Entry was brought against a husband and his wife, who made default after default. Thereupon came one J. who said that the woman had nothing, and that one had leased the land to the husband for term of his life and afterwards granted the reversion to him, and he prayed to be received.—*Stouford.* This is contrary to the entry in our writ.—This objection was not allowed. —And he afterwards said he would aver that the husband and wife held jointly.—*Gayneford.* We do not plead in abatement of the writ.—SCHARDELOWE. But if they hold jointly, then you cannot have the reversion by grant of the reversion made to you of the land of which the husband is sole tenant; for by such grant naturally nothing would vest.—And to this the COURT agreed. Wherefore *Gayneford* took the issue that the husband was sole tenant; ready, &c.—And the other side said the contrary.

Note.

(4.) § Note that where the demandant held to the default at the return of the Petit *Cape,* the tenant alleged that, since the default had been made, the demandant had disseised him, and was tenant by his own

[1] Westm. 2 (13 Ed. I.) c. 3.

sour ceo seisine fut agarde eoqe celuy qe pria ne meyntent pas soun dit.—*Gaign.* en dreit del autre pria:—la ou vous supposez le lees estre fait par le baroun al baroun et al femme, le lees se fit soulement al baroun a terme de sa vie, et puis nous graunta la reversion, par quei graunte il attourna; issi la reversion, &c.; et prioms, &c.—*Stouf.* Le lees se fist al baroun et a la femme come nostre bref suppose; prest, &c.—*Gaign.* Nous prioms destre resceu en defence de nostre dreit par fourme de statut, qar nous ne pledroms rien en abatement de bref.—SCH. Resceyte est done par fourme de statut qaunt homme prie destre resceu par defaute de tenaunt; et sil soit come le demandaunt ad tendu daveruer dounqes nest pas le baroun soul tenaunt, et si sic dounqes nest il mye resceyvable.—Et puis *Gaign.* le baroun tient soul; prest daverer &c.—*Et alii e contra.* A.D. 1338-9.

§ Bref[1] dentre porte vers le baron et sa femme qe firent defaute apres defaute. Survient un J.[2] qe[3] dit qe la femme navoit rienz, et qun avoit lesse al baron a terme de sa vie la terre, et puis granta a lui la reversion, et pria destre resceu. —*Stouf.* Cest al contrarie del entre[4] de nostre bref.—*Non allocatur.*—Et puis il dist qil voleit averer qe le baron et la femme tindrent joyntement.—*Gayn.* Nous ne pledoms al abatement de bref.—SCHARD. Mes sils tienent joyntement donqes vous ne poez pas aver la reversion par graunte de reversion fait a vous de la terre que le baron soul tient; [qar par tiel graunt naturelement rien ne vestereit.—*Et ad hoc* CURIA *concessit.*—Par quei *Gayn.* prist lissue qe le baron tient soul, prest][5] &c.—*Et alii e contra.* Nota: Entre. [Fitz, *Resecit*, 141; *Graunt*, 63.]

(4.)[6] § Nota la ou le demandant se prist al petit *Cape* retourne a un defaute, le tenant alleggea qe puis le defaute fait[7] le demandant lad disseisi et est Nota.

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[1] This report of the case is from T., L., and 25184.

[2] J. is in L. only.

[3] T., and L. et.

[4] L. entier.

[5] The words between brackets are not in 25184.

[6] From T., L., and 25184.

[7] fait is in 25184 only.

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disseisin; to which SCHARSHULLE would have put the demandant to reply; but afterwards the tenant waived his exception.

Fine.

(5.) § One J. rendered a carucate of land to a man and his wife for term of their two lives, and it was expressed in the fine that after their death the same tenements should remain to the right heirs of the husband. —SCHARSHULLE. The husband could not have an heir while living himself, wherefore we cannot receive this fine; and also if they committed waste it would be with impunity.—And it was said that the fine should have been to the husband and the wife and the heirs of the husband &c.

A fine refused.

§ Note that *Kelshulle* wished to have levied a fine, rendering the tenements to a man for term of his life, the remainder after his death to his right heirs. And it was refused, because he did not limit any mesne estate to another.

Account.

(6.) § Account where the issue "Never his receiver by "the hands of those of whom he has counted" could not be received; but the defendant was driven to say simply "Never his receiver." And yet nothing shall be enquired but whether &c. according to the manner in which he has counted; for if it should be found that the defendant was the plaintiff's receiver by another's hand, he shall not account.

Account.

(7.) § Account, against a bailiff, who said that he was counter-teller with one who was receiver; and because this was only evidence, the averment was received that he was the plaintiff's receiver according to the manner in which the plaintiff had counted; ready &c.—And the other side said the contrary.

Account.

(8.) § Account, against a receiver who said that he had been steward of the plaintiff's household, and had received such a sum as the plaintiff supposed; but he said that

tenant par sa disseisine; a[1] quei SCH. voleit aver mys le demandant daver respondu; mes puis le tenant weyva sa excepcion. A.D. 1338–9.

(5.)[2] § Un J. rendy un carue de terre a un homme et a sa femme a terme de lour ij. vies et qe apres lour deces qe mesmes les tenementz remeindreint as dreits heirs le baroun.—SCH. Le baroun ne put pas avoir heir, vivaunt luy, par quei nous ne poms resceivere ceste fyn; et auxi sil fesoient waste il serroit despuny.—Et fut dit qe la fyn serroit al baroun et a la femme et a les heirs le baroun &c. Finis.

§ Nota[3] qe *Kels.* voleit aver leve une fyne daver rendu les tenementz a un homme a terme de sa vie, le remeindre apres son deces a ses dreits heirs. Et fust refuse, pur ceo qil tailla nul estat mene a autre. Fine refuse. [Fitz. *Fynes*, 64.]

(6.)[4] § Acompte, ou lissu ne poet estre resceu, unqes son resceivour par les mayns ces[5] qil ad compte, mes fust chace a dire symplement unqes son resceivour. *Et tamen*[6] rien serra enquis mes si &c.[7] solom ceo qil ad compte; qar si trove fust son resceivour par autri mayn il nacomptera pas. Acounte. [Fitz. *Issue*, 26.]

(7.) § Acompte vers un bailiff, qe dit qil fust contretaillour ove un qe fust resceivour; pur ceo qe ceo ne fust forsqe evidence laverement fust resceu qil fust son resceivour solom ceo qil ad compte; prest &c.—*Et alii e contra.* Acounte. [Fitz. *Accompt*, 76.]

(8.) § Acompte vers un resceivour, qe dist qil avoit este seneschal del houstel le pleintif, et resceut autiel summe com le pleintif supposa; mes il dit qil Acounte.

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[1] T. par.

[2] From 16560 alone as far as the point at which the larger type ends.

[3] This report of the case is from T., L., and 25184.

[4] This and the following four cases are from T., L., and 25184.

[5] T. ses.

[6] L. cum.

[7] The words si &c. are not in 25184.

A.D. 1338-9.

he accounted weekly every Saturday, wherever his lord was.—*Pole.* Where can this thing be averred?—SCHARDELOWE. Are all the places in one county?—*Rokell.* Yes, Sir.—SCHARDELOWE. Then this can be enquired by an Inquest.—Wherefore they were at issue that he had fully accounted; ready &c.—And the other side said the contrary.

Aid-prayer.

(9.) § Note that aid was prayed of one under age, and the demandant said that he was of full age, and prayed a writ to cause him to come; and he was summoned. And he came, and he was under age. And the demandant said that he was not the same person of whom &c.—And by examination of the infant and others the COURT was apprised that he was the same person.—Wherefore the parol demurred.

Process.

(10.) § Note that a writ was brought against husband and wife. At the return of the Grand *Cape,* through the default of the husband, the wife was received to defend her right, and she vouched. Process was sued against the vouchee as far as the *Sequatur suo periculo.* And on the day the wife did not come, nor was any writ returned; but the demandant caused himself to be essoined. Thereupon came another and showed that the reversion after the death of the wife was his, and prayed to be received. And because the essoiner could not be party to try that, the essoin was adjudged and adjourned. And he who came was told that he should appear on the same day if he would.

Avowry.

(11.) § Avowry by a guardian for *damage feasant*; and he showed how he was guardian in chivalry. And note that he avowed as in his own several, and not in the several of the heir.—*Trewith.* We tell you that the place is our several, and not his; for the land is holden of us, and not of him, and we were seised of the

acompta par symeyns[1] chescun Samadi[2] qele part qe son seignur fust.—*Pole.* Ou purra ceste chose estre avere?—SCHARD. Sont touz lies lieux en un counte?—*Rokell.* Sire, oil.[3]—SCHARD. Donqes poet ceo estre enquis par un enquest.—Par quei ils furent a issu qe pleinement acompte; prest &c.—*Et alii e contra.* A.D. 1338-9.

(9.) § Nota qe eide fust prie dun deinz age, et le demandant dist qil fust de pleine age, et pria bref de ly faire venir; et fust somons. Et vient, et fust deinz age. Et le demandant dit qil ne fust pas mesme la persone de qi &c.—Et par examinement del enfant et autres[4] la COURT fut apris qil fut mesme la persone.—Par quei la parole demura. Aide prier.

(10.) § *Nota* qe bref porte vers baron et sa femme. Al grant *Cape* retourne, par la defaute le baron, la femme fust resceu a defendre son dreit, et voucha. Proces suy vers le vouche tanqe al *Sequatur suo periculo;* a quel jour la femme ne vient pas, ne nul bref fust retourne, mes le demandant se fist essoner. Survient un autre et moustra qe la reversion apres le decees[5] la femme fust a ly, et pria destre resceu. Et purceqe lessonour ne poet estre partie a cela trier, lessone fust ajugge et ajourne. Et dit fust al survenant qil fust a mesme le jour *si voluerit.* Proces.

(11.)[6] § Avowerie pur damage fesaunt, pur un gardein; et mostra coment il fust gardein en chivalerie. Et nota qil avowa com[7] en son several demene et noun pas en le several leir.—*Tr.* Nous vous dioms qe le lieu est nostre several et noun pas le soen; qar la terre est tenu de nous et noun pas de lui, et nous Avowerie.

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[1] T. ses meyns.

[2] T. symaygne.

[3] 25184, *Rokell.* Oyl; L. *Pole,* Sire, oil.

[4] The words et autres are not in 25184.

[5] 25184, la mort, instead of le decees.

[6] This report of the case is from T., L., and 25184.

[7] com is in 25184 only.

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wardship on the day of the taking and still are.—*Pole.* The land is holden of us in the manner that we suppose by our avowry; ready &c.—SCHARDELOWE. You shall not try the right to the wardship through this taking of the beasts.—*Pole.* Then we say that we were seised of the wardship on the day of the taking, and that he was not.—SCHARDELOWE. Your issue shall be on the severalty.—*Pole.* It is our several, in the manner we avow; ready &c.—*Trewith.* It is our several, in the manner we have said, and not yours; ready &c.—and the other side said the contrary.

Replevin.

§ S. de P. complained that Bernard de C. tortiously took his beasts. *Pole,* for Bernard, avowed &c. for the reason that one G. held of him &c., and that this G. died, and that, after the death of G., S. de P. snatched the wardship of A., son and heir of G.; and thereupon he who now complains came and depastured upon our several by reason of the non-age of A.; so B. avows the taking for *damage feasant* in his several, in this manner.—*Gayneford.* Whereas you say that the infant's ancestor held of you &c., he held of us; so it is our several &c.; ready.—*Pole.* He held of us and not of you; ready &c.—SCHARDELOWE. Be assured that the tenancy cannot be tried in this Replevin.—*Pole.* It is our several in the manner we have said; so he depastured our grass, *damage feasant,* &c.—*Gayneford.* It is our several in the manner we have said, and not yours; ready &c.

Note: Scire Facias.

(12.) § *Scire facias* in the Chancery for David Mareschal against Thomas Bamburghe and Michael Presfene—(reciting how the Escheator had seized a certain manor into the King's hand by reason of the forfeiture of one D. who now brings this writ, and how the King by his charter had given it to Michael, and that afterwards Thomas had entered on the said manor)—to know with certainty why the manor should not be re-seized into the King's hand and be delivered to him who now sues as to one who has forfeited nothing, but has always been faithful to the King, as he says &c.—*Parning.* You see clearly how this writ supposes

fumes seisi de la garde jour de la prise fait, et uncore sumes.—*Pole.* La terre est tenu de nous solom ceo qe nous supposoms par nostre avowerie; prest &c. —SCHARD. Vous ne trierez pas le dreit de la garde en ceste prise des avers.—*Pole.* Donqes dioms nous qe nous fumes seisi de la garde jour de la prise, et noun pas ly.—SCHARD. Vostre issue serra sur la severalte.—*Pole.* Nostre several solonc ceo qe nous avowoms; prest &c.—*Trew.* Nostre several solonc ceo qe nous avoms dit, et noun pas le vostre; prest &c. *Et alii e contra.* A.D. 1338–9.

§ S.[1] de P. se pleint qe Bernard de C. a tort prist ses avers. *Pole,* pur Bernard, avowa &c. par la resoun qun G. tient de luy &c., le quel G. morust, apres quel mort il happa la garde de A. fitz et heir G., ou mesme cestuy qe se pleint vint et puist nostre several par cause del noun age A., issint avowe il la prise pur damage fesaunt en son several, par la manere.—*Geyn.* La ou vous ditez qe launcestre lenfaunt tynt de vous &c., il tynt de nous; issint est il nostre several, &c.; prest.—*Pole.* Il tynt de nous, et noun pas de vous; prest &c.—SCH. Soiez certein qe la tenaunce ne put mye estre trie en cest *Replegiari.*—*Pole.* Il est nostre several en la manere com nous avoms dit; issint peust il nostre herbe, damage fesaunt, &c.—*Geyn.* Il est nostre several en la manere com nous avoms dit, et ne mye le vostre; prest &c. Replegiari.

(12.)[2] § *Scire facias* en la Chauncellerie [pur David Mareschal][3] vers Thomas Bamburghe et Michel Presfene, compernant coment leschetour avoit seisi un certein manoir en la mayn le Roi [par cause de forfeiture un D.[4] qore porte cestui bref, et coment le Roi][5] par sa chartre lavoit done [a Michel],[3] et qe puis Thomas le dit manoir est entre, assavoir moun [par quei][3] le manoir ne dust estre reseisi en la mayn le Roi et livere a celui qore suist come a celui qe rien nad forfait, mes touz jours ad este a la foi le Roy, *ut dicit* &c.—*Parn.* [Vous veez bien coment][3] ceo bref[6] sup- Nota: Scire Facias.

[1] This report of the case is from 16560 alone.

[2] This report is from T., L., 16560, and 25184.

[3] The words between brackets are not in 16560.

[4] 25184 and 16560, J.

[5] The words between brackets are not in L.

[6] 25184, il, instead of ceo bref.

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that Thomas is tenant and that he entered after the demise by the King &c., which entry might be by judgment or by a feoffment whereof he has a warrantor. And this place is only a place of office. Wherefore we do not think that without a writ at common law you will put us to answer.—WILLOUGHBY. What writ at common law would serve?—*Parning.* A writ of Right by which his warranty would be saved to him, or perhaps an assise of Novel Disseisin, if so be that the Escheator has ousted him without writ or warrant.—WILLOUGHBY. A writ of Right is too high a remedy and involves too much delay; and as to the warranty, you well know that a *Scire facias* which issues out of a judgment or a fine is maintainable as well against a purchaser who has warranty as against any other; and if he can not vouch still he can have his writ of *Warrantia Cartæ,* and so can you here.—*Parning.* It is more reasonable that he should be put to his writ of Right which only puts the party to delay, than that I should be ousted of my warranty; for upon judgment given in this place I shall never have to the value.—SCHARDELOWE. When the forfeitures of those who were of the party of the Earl of Lancaster were repealed, it was adjudged that all should be restored to their inheritances;[1] and then it was suggested in Parliament on account of the injustice in respect of warranty that they should be put to the writ of Right &c., and on account of the injustice of the delay it was agreed that they should have their suit in this way.—*Parning.* That was a judgment of Parliament; and also the first judgment was annulled; but in this case there is still in force the King's charter which cannot be tried without him, and in this suit

[1] 2 Rot. Parl., 5.

pose Thomas estre tenant et qil est entre puis la demyse le Roi &c., qele [entre poet estre par jugement ou par][1] feffement de quel il ad son garrant; et cest place nest forsqe[2] doffice. Par quei nous nentendoms pas qe sanz bref a la comune ley nous voilletz[3] mettre a respondre.—WILBY. Quel bref servireit a la comune ley?—*Parn.* Bref de dreit ou sa garrantie lui serra sauve, ou par cas lassise de novele disseisine, sil soit issi qe leschetour lui ousta saunz bref ou garaunt.—WILBY. Bref de dreit est trop haut remedie et prent trop delay; et qant a la garrantie [vous savez bien qun][4] *Scire facias* qe ist[5] hors dun jugement ou dun fyn est meyntenable auxi bien vers purchaceour qad garrantie qe vers autre, et si ne put il voucher mes sa garrantie de chartre aver, et auxi poez vous icy.—*Parn.* Il est plus de resoun qil soit mys a son bref de dreit quel met partie forsqe a delay qe a moy ouster de ma garrantie; qar par jugement taille en ceste place naveroy jeo jammes a la value.—SCHD. Qaunt les forfaitures ceux[6] qe furent de[7] la querele le Count de Lancastre furent repellez, fust agarde qe touz fussent reenherites, et donqes fust parle en Parlement sur meschef de garrantie qils serroint mys al bref de dreit &c., et pur le meschef de le delaye fust assentu qils ussent lour sute[8] par ceste voie.—*Parn.* Ceo fust agard de Parlement; et auxi le primer jugement fut anienti; mes icy la chartre le Roi est uncore[9] en sa force qe ne put estre trie sanz lui mesme,[10] et en ceste sute il ne put estre fait partie

A.D. 1338-9.

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[1] For the words between brackets are substituted in 25184 the words puyt estre ajugge un.

[2] L. pas.

[3] T. voloms.

[4] The words between brackets are not in 16560.

[5] The words qe ist are in 16560 only.

[6] The word ceux is not in T. or L.

[7] T. and L. en.

[8] T. sute tiente.

[9] 16560, esta, instead of est uncore.

[10] 16560 le memes.

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Note touching Redissesin.

he cannot be made a party &c.—SCHARSHULLE. When one commits a redisseisin and then alienes over, the writ of Redisseisin does not lie, but the proper course is to bring the assise.—*Parning.* And you have there by the King's writ, which you have there before you, that the King himself records that David Mareschal levied war against him, and so forfeited (by reason of which forfeiture the King seized &c.) and so he is out of the protection of the law judgment whether answer ought to be made to him.—*Birtoun.* It is ordained by statute that the King never ought to record except by due process, and this record is not by due process but upon suggestion; wherefore we sued to the King to be restored to the law; and the King by his commission assigned R. Talbot, the Warden of Berwick, to enquire of this matter; and by inquest, which is returned into the Chancery and sent here, it is found that against the King we never did anything &c.; and thus we are restored to the law.—WILLOUGHBY. When the King records anything of his own view, that record shall never be annulled; but when he records on the information of others, that record may be defeated by such suit as the plaintiff has made, and not otherwise; wherefore it seems that the plaintiff has a right to an answer.—*Parning.* This inquest does not give him a right to an answer, for it was taken without warrant; for the inquest was taken by others than R. Talbot, and not by him, whereas no one but he had a warrant; wherefore &c.—*Birtoun.* The King directed him to cause enquiry to be made; and that he could do as well by another as by himself; and if the King directed the Escheator to take an inquest, although the sub-escheator took it, it would be good enough, and yet he is not named in the warrant &c.—They were adjourned.

Note touching what is of record.

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Nota de redisseisine.

&c.—SCHS. Qaunt on fait une redisseisine et puis aliene outre, la redisseisine ne gist pas, mes il convient porter lassise.—*Parn.*[1] Et vous avez la par bref le Roi, qe vous avez devant vous la, qe le Roi recorde mesme qe David Mareschal leva de guere[2] encontre lui et issi forfist, par quele forfaiture le Roi seisist &c., et issi est il hors de la ley, jugement sil deive estre respondu.—*Birtoun.* Par estatut est ordeine qe le Roi ne deit mes recorder mes par due processe, et cel record nest pas par due processe[3] mes sour[4] suggestioun; par quei nos seumes au Roi destre[5] restitute a la ley,[6] et le Roi par sa commission assigna R. Talbot gardein de Berwyk denquere de ceste chose, et par enquest, quel est retourne en le Chauncellerie et mande icy trove est qe unqes ne feymes rien[7] encontre le Roi &c., issi sumes a la ley. — WILBY. Qant le Roi recorde ascune chose de sa vewe demene cel record ne serra jammes anienti; mes qant il recorde par autri aprise, ceo put estre defait par tiel sute come il ad fait, et autrement nient; par quei il semble qil est responable. — *Parn.* Cest enquest ne lui fait pas[8] responable, qar ele fust pris sanz garrant; qar lenquest fust pris par autres qe par R. Talbot et nient par lui,[9] ou nul autre avoit garrant fors lui; par quei &c.—*Birtoun.* Le Roi lui manda qil fait enquere, et ceo poiast il faire auxi bien par autre com par lui mesme; et si le Roi manda al eschetour de prendre enquest, mesqe le soutcheschetour le preigne, cest assetz bon, et si nest il pas nome en la garrant &c. — *Adjornantur.*

Nota de record.

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[1] For the rest of this report (from "*Parn.*" to the end) the following sentence is substituted in 16560:—Pus fut dit qe la chartre prove le pleintif felon et non responable.

[2] L. gre.

[3] L. and T. aprise.

[4] L. and T. par.

[5] destre is not in T.

[6] The words a la ley are not in L.

[7] rien is in 25184 only.

[8] T. en lui fait, instead of ne lui fait pas.

[9] The words et nient par lui are not in 25184.

A.D. 1338–9.

Præcipe quod reddat.

(13.) § A *Præcipe quod reddat* was brought at the Quinzaine of last Easter, and the demandant's attorney caused himself to be essoined, and an objection was raised against the essoin by the tenant because the demandant had another attorney who did not proffer himself or cause himself to be essoined; and they were adjourned to the Octaves of St. Michael, at which day the tenant caused himself to be essoined, and they had a day now.—*Trewith* rehearsed the process and prayed judgment on the non-suit, for the reason above; and this was after count counted and defence made; and he showed the warrant of the other attorney of the demandant, of Easter term.—*Kelshulle.* Sir John Inge received a bill of an attorney in the country the previous Lent, but because the attorney was not present he took that bill upon condition that if the attorney wished to be in that capacity he should record it; and Sir John did not speak to or examine the attorney before the five weeks of Easter; wherefore he was not before that legally an attorney, nor could the attorney before that be charged with the care of the matter.—SCHARDELOWE. But the demandant did all that he could to make the attorney; wherefore, as the attorney afterwards assented, he is to be considered the demandant's attorney throughout.—And so it seemed to the COURT.—*Pole.* The tenant was essoined after his objection, thus waiving his objection, just as, when a demandant causes himself to be essoined, at the return of the Grand *Cape* the default is saved.—This was not allowed. Wherefore the process was by decision of the COURT discontinued, and there was not a non-suit, for they have not now a day.

One attorney of the tenant essoined, and the other not.

§ A man had made two persons his attorneys, and one was essoined and the other not.—*Trewith* came and raised an objection to this, and the process was discontinued, and no one was amerced.

(13.)[1] § *Præcipe quod reddat* fust porte a la xv^e de Pasche darein, et lattourne le demandant se fist essoner, et par le tenant un chalenge fust mys sur lessone, pur ce qe le demandant avoit un autre attourne qe ne se profri pas ne fist essoner;[2] et furent ajournez as uytaves de Seint Michel, a quel jour le tenant se fist essoner, et avoynt jour a ore.—*Trew.* rehercea le proces et pria jugement sur la nounsuyte, *causa ut supra;* et ceo fust apres count counte et defens fait; et mostra le garrant lautre des attournez le demandant le terme de Pasche.—*Kels.* Sire[3] Johan Inge resceut une bille [dattourne en pais le caresme devant, mes pur ceo qe lattourne ne fuist pas en present il prist cel bille][4] sur condicioun qe si lattourne le voleit estre qil recordereit,[5] et[6] Sire Johan Inge ne parla ne examina pas lattourne devant les v. symaignes de Pasche; par quei devant par ley ne fust[7] il pas attourne, ne devant ne poait lattourne.[8]—Estre charge de la bosoigne.—SCH. Mes le demandant fist ceo qen lui fut; par quei qant lattourne se assentist apres de tut temps est il ajugge son attourne.—Et ceo semble a la COURT.—*Pole.* Le tenant puis son chalange fust essone, issint weyvant le chalange, come en cas ou le demandant se fait essoner al grant *Cape* retourne la defaute est saufve.—*Non allocatur.*—Par quei le proces par agard fust discontinue, et noun pas nounsuite,[9] qar ils nount pas aore jour.

A.D. 1338–9.

Præcipe quod reddat.

[Fitz. *Attourne,* 72.]

§ Un[10] homme avoit fait ij. ses attournez, et lun fut essone, et lautre ne mye.—*Trew.* vient et chalengea ceo, et le proces fut discontinue, et nul ne fut amercye.

Lun attourne du tenaunt essone et lautre nient.

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[1] From T., L., and 25184.

[2] 25184, fut essone, instead of se fist essoner.

[3] T. Monsieur.

[4] The words between brackets are in L. and 25184, but not in T.

[5] recordent.

[6] L. Ne.

[7] 25184, fist.

[8] T. laccion.

[9] T. nounscieut.

[10] This note is from 16560 alone.

A.D. 1338–9. Formedon.

(14.) § L. de C. brought a writ of Formedon in the descender, and demanded a carucate of land, and counted that one gave the land to S. his grandfather with the donor's daughter in frank-marriage, and made the descent from his grandfather to his father, and from his father to himself.—*Trewith.* Whereas you suppose the gift to have been made in frank marriage, the gift was made to your grandfather in fee; and we tell you that one S., your ancestor, enfeoffed one K., whose assignee we are, and bound himself and his heirs to the warranty; judgment whether action, &c.—*Rokell.* We make protestation that we do not acknowledge that it is the deed of our ancestor; and we tell you that this same person was our grandfather, and what you have said further is a traverse of our writ; wherefore we will aver our writ.—SCHARDELOWE. He relies upon his warranty, to which you ought to answer.—*Trewith.* Is this the deed of your ancestor?—*Rokell.* The law does not put me to answer that when it is contrary to my writ.—SCHARDELOWE. He relies upon the warranty, to which you ought to answer; and supposing you were vouched to warrant, you would be compelled to warrant, saving to you your action, if action you had; but he shows that you cannot have an action contrary to the deed of your ancestor.

Formedon.

§ Formedon in the descender, of a gift made by A. to W. in frank-marriage with J. his daughter. And he made the descent to the demandant.—*Pole.* He cannot demand anything; for A. his grandfather gave the same tenements, by this deed, to W. and J. his wife in fee simple, and W. survived and enfeoffed us; thus you shall be bound in warranty to us as assignee of W.; judgment whether an action &c.—*Rokell.* We suppose that A. gave in frank-marriage to W. and J.; and you say that he gave to them in fee simple: we will aver our writ.—HILLARY. He pleads to you in bar by warranty, whereby he puts you to answer, and he does not plead in abatement of the writ.

A.D. 1338–9.

Fourme de doun.

(14.)[1] § L. de C. porta bref de fourme de doun en le discendre, et demanda un carue de terre, et counta qune dona la terre a S. son aiel ovesqe sa fille en fraunk mariage, et fit la descente de soun ael a soun pere et de soun pere taunqe a luy.—*Trew.* La ou vous supposez le doun estre fait en frank mariage le doun fut fait a vostre ael en fee; et vous dioms qe un S. vostre auncestre enfeffa un K., qi assigne nous sumes, et obliga luy et ses heires a la garrantie; jugement si accion &c. —*Rok.* Nous fesoms protestacion qe nous ne conusoms pas qe cest le fet nostre auncestre, et vous dioms qe mesme cestuy fut nostre ael, et ceo qe vous avez[2] dit outre est a travers de nostre bref; par quei nous voloms averer nostre bref.—Sch. Il relie sour sa garrantir, a qui il vous covent respondre.—*Trew.* Est ceo le fait vostre auncestre?—*Rokel.* La ley ne met a ceo respondre qaunt ceo est a contrare de mon bref.—Sch. Il relye sour la garrantie a qui il vous covent respondre; et mettoms qe vous feusez vouche a garrantir vous serrez chace de garrantir sauve a vous vostre accion, si accion ussez; mes il moustre qe vous ne poiez accion aver countre le fait vostre auncestre.

Forma donationis.

§ Forme[3] doun en le descender dun doun fait par A. a W. en fraunc mariage ove J.[4] sa fille. Et fist la descente al demandant. —*Pole.* Il ne poet rienz demander; qar A. son aiel dona par ceo fet mesmes les tenementz a W. et J. sa femme en fee simple, et W. survesqist et nous enfeffa; issi com al[5] assigne W. nous serrez tenu a la garrantie; jugement si accion &c.—*Rok.*[6] Nous supposoms qe A.[7] dona en fraunc mariage a W. et J., et vous dites qil dona a eux en fee simple: nous voloms averer nostre bref. Hill. Il vous plede en barre par garrantie, par quei il vous met a respondre, et ne mye en abatement du bref.[8]

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[1] From 16560 alone as far as the point at which the larger type ends.

[2] The words et ceo qe vous avez are repeated in the MS.

[3] This report of the case is from T., L., and 25184.

[4] J is in 25184 only.

[5] al is in 25184 only.

[6] L. *Kels.*

[7] T. B.

[8] T. and L. et noun pas abatre le bref.

A.D. 1338-9.

Ancestor's charter.

(15.)§ One demanded against one W. the manor of S.—*Parning.* Your ancestor enfeoffed us of all the tenements that he had in S., and in B., and they are the same tenements that you demand as a manor, and he bound himself and his heirs to the warranty; judgment whether an action, &c.—*Pole.* The manor that we demand was not delivered by that deed; ready &c.—*Parning.* He has admitted his ancestor's deed, and that the tenements comprised in the deed are the same tenements that he demands; judgment how we ought to depart.—BASSET. When a deed is to be avoided, it must be in one of two manners—either by denying the deed—or by admitting the deed and saying that nothing passed.—*Stouford.* It may be that the tenements were first leased for term of life, and that afterwards he made that deed, seisin having already been given, so that by that deed the demesne did not pass, and we cannot say that nothing passed, for the fee and the right passed.—SCOT. Had such been his case, he would have pleaded in a different manner, whereby we should not have to understand that the demesne passed by that deed alone; and you will not be under any injustice, for the Inquest will be examined on that point.—*Stouford.* If one plead a release it is good pleading to say "not seised at the time of the making:" so is it in this case to say that the tenements demanded did not pass by that deed. And it was said by the COURT:—If I give land to you in divers vills, and seisin be delivered in one vill, that is sufficient for all.—And afterwards he said that the tenements did not pass, &c.—But it was entered upon the roll that nothing passed, &c.

Formedon.

§ Formedon in the descender. The tenant pleads, by the deed of the donor, in bar of the action, and says that, whereas the demandant demands the manor of N., his ancestor gave the same tenements by the description of all the tenements which he had in three vills and in such a hundred, with warranty &c., in fee simple &c.—*Stouford.* We will aver that the manor which we demand did not pass by the deed of our ancestor; judgment whether

(15.)[1] § Un demanda vers un W. le manoir de S.—*Parn.* Vostre auncestre nous enfeffa de touz les tenementz qil avoit en S. et en B., et sount mesmes les tenements qe vous demandez come manoir, et obliga luy et ses heires a la garrantie; jugement si accion &c.—*Pole.* Le manoir qe nous demandoms ne fut pas livere par ceo fait; prest &c.—*Parn.* Il ad conu le fait soun auncestre, et qe les tenementz compris en le fait sount mesmes les tenementz qil demande; jugement coment nous devoms departir.—BASS. Quant homme deit voider un fait il covent qe ceo soit par un des ii. maneres—ou a dedire le fait—ou a conustre et dire qe rien ne passa.—*Stouf.* Il put estre qe les tenementz al commencement furent lessez a terme de vie[2] et pus il fit ceo fait en seisine issint qe par ceo fait le demene ne passa mye, et nous ne poms pas dire qe rien ne passa qar le fee et le dreit passa.—SCOT. Si soun cas ust este tiel, il eust plede en autre manere, par quei nous ne devoms entendre qe le demene passa par ceo fait soulement; et vous ne serrez a nul meschef, qar lenquest serra examine sour cel point.—*Stouf.* Si homme plede par relees il est bon plee a dire nent seisi al temps de la confeccion, auxi est il en ceo cas a dire qe les tenementz demandez ne passerent mye par ceo fait. Et dit fut par la COURT:—si jeo donne terre a vous en divers villes et la seisine seit livere en la un ville cest assez pur tut.—Et pus il dit qe les tenementz ne passerent mye &c.—Mes il fust entre en roule qe rien ne passa, &c.

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. . . . e de chartre dauncestre.

Forme[3] doun en le descender. Le tenant plede par le fet le donour en barre daccion, et dist qe la ou le demandant demande le manoir de N.,[4] son auncestre, par noun de touz les tenementz qil avoit en iij. villes et en tiel hundrede, dona mesmes les tenementz ove garrantie &c. en fee simple,[5] &c.—*Stouf.* Nous voloms averer qe le manoir qe nous demandoms ne passa pas par le fait

Forma donationis.

[Fitz. *Estoppel*, 177.]

[1] From 16560 alone, as far as the point at which the larger type ends.

[2] MS. daunz, *i.e.*, of years. The context shows that an estate of freehold is meant; and the words "de vie" are in accordance with the conclusion (p. 109) of the other report of the case.

[3] This report of the case is from T., L., and 25184.

[4] T. F.

[5] 25184, taille.

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we shall be barred by such a deed.—*Parning.* By his plea he does not deny that the tenements are included in the charter of his ancestor, which deed he has admitted and does not avoid; for in order to avoid the deed he must say that nothing passed, for if one acre passed the charter is of full force; wherefore we demand judgment.—*Pole.* If I make to you a charter of three acres and then deliver to you only two acres, the charter does not bar me if I demand the third acre, and so I can have no other plea but to say that the acre which is in demand did not pass; for if I say that nothing passed, it is false, because the two acres did pass.—SCHARDELOWE. If I make to you a charter of tenements in a thousand places and give you seisin in only one place, all pass; and this has been adjudged, that is to say in respect of tenements which are in one county; wherefore you do not avoid the deed unless you say that nothing passed.—And he was put to this by decision of the court, and in this form was the issue received.—And in this plea it was said that if a man make a charter conveying a fee simple, and then make the livery only for term of life, the fee simple nevertheless passes by the charter.

Account.

(16.) § A. brought a writ of Account against B. as his receiver by divers hands. — *Gayneford.* He was steward of the plaintiff's household and received by his hand every week for his expenses 7*s.*, for which he accounted without this that he was the plaintiff's receiver according to the count of the plaintiff; ready &c.— *Pole.* Our receiver in the manner in which we have counted ready &c.—And the other side said the contrary.

Debt.

(17.) § A writ of Debt by executors against the Abbot of Glastonbury for arrears of an annuity granted by his predecessor to their testator for term of life; and the bailiff of the Abbot demanded cognisance of the plea, and he had it, because cognizance had been previously allowed, notwithstanding that the Abbot was himself a party.

Annuity.

§ A writ of Annuity was brought against the Abbot of Glastonbury, and the count was that the predecessor of the Abbot, by assent of his Convent, acknowledged himself to be bound to the annuitant in an annuity of 10*l.*; and the deed was dated at Glas-

nostre auncestre; jugement si par tiel fet serroms barre.—*Parn.* Par son plee il ne dedit[1] pas qe les tenementz ne sount compris deinz la chartre son auncestre, quel fet il ad conu et nel voide pas; qar a ceo qe le fet serroit voide il dirra qe rienz ne passa, qar si une acre passa la chartre est pleine; par quei nous demandoms jugement.—*Pole.* Si jeo vous face une chartre de iij. acres, et puis vous livere forsqe les ij. acres, la chartre ne moy barre pas si jeo demande la tercе acre, et si ne puisse jeo aver autre plee mes a dire[2] qe lacre qest en demande ne passa pas; qar si jeo die qe rien ne passa cest faux, qar les ij. acres passerent.—Sch. Si jeo vous face une chartre de tenementz en mil lieux et vous livere la seisine forsqen un lieu, tut passe; et ceo ad este ajugge, saver des tenementz qe sont en un counte; par quei vous ne voides pas le fet si vous ne diez qe rien ne passa.—Et a ceo par agard il fust mys, et issi fust lissu resceu.—Et en ceo plee fust dit qe si homme face une chartre de fee simple et puis fait la livere forsqe a terme de vie, et par la chartre uncore fee simple passe. A.D. 1338–9.

(16.)[3] § A. porta bref daccompte vers B. saver qe il fut son resceivour[4] par divers mayns.—*Gayn.* Il fust seneschal del hostiel le pleintif, et resceut chescune symaigne par sa[5] mayn et pur ses despenses vij.[6] s. et acompta de ceo, sanz ceo qil fust son resceivour solom ceo qil ad counte; prest &c.—*Pole.*[7] Nostre resceivour solom ceo qe nous avoms conte; prest &c.—*Et alii e contra.* Acounte.

(17.)[8] § Bref de Dette pur executours vers Labbe de Glasseburi des arrerages dune annuite grante par le predecessour a son testatour a terme de vie; et le baillif del abbe demanda la conisance del plee: *et habuit, quia alias allocatur, non obstante* qe labbe fut partie mesmes. Dette. [Fitz. *Conisans*, 82.]

§ Bref[9] dannuite fut porte vers Labbe de Glastyngbure, et counta qe le predecessour Labbe par assent de soun covent se Annuite.

[1] T. dist.

[2] The words mes a dire are not in 25184.

[3] From 16560, 25184, T., and L.

[4] In T., L., and 25184, the report begins with the words Acompte vers resceivour.

[5] L. la.

[6] T. vj.; 16560, viij.

[7] The name is not in T.

[8] From T., L., and 25184, as far as the point at which the larger type ends.

[9] This report of the case is from 16560 alone.

A.D. 1338-9.

tonbury. The Abbot's bailiff came and prayed that the cognisance of the plea might be granted to us; and they found allowance of cognizance; and the bailiff gave a day &c.

Writ abated.

(18.) § Note that a writ was abated after view for false Latin: because there was *avia* instead of *aviæ* in a writ of Entry *sur disseisin.*

Writ against husband and wife, and third person.

(19.) § A writ was brought against a husband and his wife, and a third person; and the third made default after default. The demandant prayed seisin of a moiety of the land by reason of his default. The husband and wife said that they were tenants of the entirety and that the third person had nothing. And the demandant said that they were tenants in common. Process was continued &c.; and on the day the husband made default, wherefore the Petit *Cape* was awarded. At the return of the Petit *Cape* the husband made default in respect of a moiety; the wife came, and prayed to be received in right of the entirety.—*Parning.* With respect to the moiety which may be lost by the default of the husband let her be received, and as to the other moiety we pray seisin. —*Stouford.* The husband and wife said before that they were tenants of the entirety, and that the third person had nothing, and now the husband makes default, so that by his default the entirety would be in danger of being lost, wherefore the wife is in a case in which she may be received. — *Parning.* The wife shall not have any plea until she is received, for although the husband and his wife plead together the plea shall be called that of the husband alone, and since the wife cannot maintain that which the husband puts forward, we pray seisin of the land because of the default of the third person. — *Stouford.* If a writ be brought against three persons, and one afterwards make default, and the two say that they are tenants of the entirety, and that the third has nothing, and then one of them makes default, nothing shall be

graunta destre tenu a luy en le annuyte de x. livres; et la date del fet fut en Glastyngbure. Vynt le baillif Labbe et demanda la conisaunce de plee nous fut grante, et troverunt allouance, et le baillif dona jour, &c. A.D. 1338–9.

(18.)[1] § Nota qun bref apres la vewe[2] fust abatu pur faux Latyn, pur ceo qil avoit *avia* ou il duist aver este *aviæ* en un bref dentre sur la disseisine. Bref abatu.

(19.)[3] § Bref fut porte vers le baroun et sa feme et le terce; et le terce fist defaute apres defaute. Le demandaunt pria seisine de terre de la moyte par sa defaute. Le baroun et la femme disoient qil furent tenauntz de lentier, et qe le terce navoit rien. Et le demandaunt dit qils furent tenauntz en comune. Proces continue &c.; a quel jour le baroun fist defaute, par quei le petit *Cape* fut agarde. De la moyte al petit *Cape* retourne le baroun fist defaute; la feme vient, et pria destre resceu en dreit del entier.—*Parn.* A la moyte qest a perdre par la defaute le baroun seit resceu, et qaunt al altre moyte nous prioms seisine.—*Stouf.* Devaunt ces houres le baroun et sa femme disoient qil furent tenauntz del entier, et qe le terce navoit rien, et ore le baroun fait defaute issint qe par sa defaute lentier serroit a perdre, par quei la feme est en cas de [estre] resceu.—*Parn.* Femme navera nul plee taunt qele seit resceu, qar mes qe le baroun et sa femme pledent un tut serra dit le plee le baroun, et de pus qe la femme ne put pas meintener ceo qe le baroun tend nous prioms seisine de terre par la defaute le terce.—*Stouf.* Si bref soit porte vers iij. et lun face defaute apres, et les deux dient qe il sount tenauntz del entier, et qe le terce nad rienz, et pus un de eux fist defaute, rien ne serra Bref vers homme et femme et le terce.

[1] From T., L., and 25184.

[2] The words apres la vewe are not in T.

[3] From 16560 alone as far as the point at which the larger type ends.

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taken into the King's hand but the third part, and for the reason that the third person is supposed to be tenant until the issue is tried; so here, &c. — SCHARDELOWE said, When a wife prays to be received in respect of an entirety she cannot be received in respect of a parcel, and not in respect of a parcel even though she were willing to accept it. — *Parning.* We shall never recover in that case.—SCHARDELOWE. Let her be received.—*Stouford.* You have heard the wife who vouches the third person to warranty.—*Parning.* To such a voucher you shall not be received, for you held in common.—*Stouford.* The wife prayed to be received in respect of the entirety because of the default of her husband, and this was accepted by him as soon as she was received, for at the time when the wife prayed to be received he could have offered to aver that they held in common in order to have ousted the wife of the receipt; but now he has suffered the wife to be received in respect of the entirety because of the default of her husband, wherefore he ought not to be received to such an averment as he offers.

Præcipe quod reddat.

§ Note that where a writ was brought against a husband and his wife and a third person, as appears in last Easter term, by reason of the default of the third person, seisin was demanded of the third part. And the husband and his wife said that they were sole tenants and that the third person had nothing; whereupon an Inquest was joined; and then the husband made default, and the wife came ready; and the demandant prayed seisin of a moiety; and because the Court was not advised as to the judgment, the Petit *Cape* for the moiety issued by reason of the default of the husband, and the judgment was respited as to the rest; and now the *Cape* being served, the wife came ready to maintain the averment offered by her husband and herself, and prayed to be received. — *Parning.* She shall not be received in respect of more than that which is to be lost through the default of her husband, and that is only the moiety for which the *Cape* issued, and for that we grant the receipt, and we pray seisin of the rest which is to be lost by the default of a stranger by reason of whose default no law gives her receipt.—SCHARDELOWE. If the husband had not made

pris en la mayn le Roy mes la terce partie, et par taunt qe le terce est suppose tenaunt devaunt qe le issue soit trie; *sic hic*, &c. — SCH. dit qaunt femme prie destre resceu dune entier ele ne peut mye estre resceu de parcele, et de parcele ne mye mesqe la voleit accepter.—*Parn.* Nous ne le recoveroms jammes. —SCH. Soit resceu.—*Stouf.* Vous avez oy la femme qe vouche a garrant le terce. — *Parn.* A tiel voucher ne serrez resceu, qar vous tenistes en comune.—*Stouf.* La femme prie destre resceu del entier par la defaute soun baroun, quel chose fut accepte de luy del houre qe il fut resceu, qar al temps qaunt la femme pria il poet aver tendu daverer qil tiendrent en comune daver ouste la femme de la resceite; mes ore il ad soeffert la femme estre resceu del entier par la defaute soun baroun, par quei a tel averement com il tend il ne deit pas estre resceu.

A.D. 1338–9.

§ Nota[1] ou bref fust porte vers le baron et la femme et le terce, *ut patet termino Paschæ ultimo*,[2] par le defaute le terce seisine[3] fuit demandee de la terce partie.[4] Et le baron et sa femme disoient qils furent soul tenantz et le terce rien nad, sur quei enquest se joynt; et puis le baron fist defaute, et la femme vient prest; et [le demandant pria seisine de la moyte; et purceqe la Court ne fust avise del jugement, le petit *Cape* de la moyte issit][5] par la defaute le baron, et le jugement respite del remenant: et ore, le *Cape* servy, la femme vient prest de meintenir laverement tendu par son baroun et lui, et prie destre resceu.—*Parn.* De plus ne serra ele resceu qe nest a perdre par la defaute le baroun, et ceo nest forsqe la moyte de quei le *Cape* issit, et de ceo grantoms la resceite, et del remenant prioms seisine qest a perdre par la defaute lestrange par qi defaute nule ley lui[6] donne resceite.—SCH. Si le baron nust pas fait defaute, mes lui et

Præcipe quod reddat.

[Fitz. *Resceit*, 142.]

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[1] This report of the case is from T., L., and 25184.

[2] See Year Books 11 and 12 Edward III., p. 421.

[3] In 25184 the words de terre are added after seisine.

[4] T. et pria seisine, instead of seisine fuit demandee de la terce partie.

[5] The words between brackets are in T. and in 25184. In L. are substituted the words:—agarde de la moyte.

[6] L. and T. ne.

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default, but he and his wife had pursued the averment, and it had passed for them, could they not have saved the entirety? Then it would be contrary to reason if she can not now have the same advantage; for otherwise, by the naming of a stranger who has nothing, and by the default of the husband, the wife will lose her right where she is ready to defend it; wherefore it seems to the COURT that, if you maintain the first averment, she is receivable for the entirety.—Wherefore *Parning* maintained that they were tenants in common; ready &c.—And the other side said the contrary.—And this averment shall be for the whole, although she was receivable for a moiety without counterplea. And *quære*, if the averment be found for the wife, whether she shall be put to plead or the writ shall abate; for if the husband and she had offered the averment and it had passed for them, the writ would have been abated. And I think that the wife will now have the same advantage.—But *Parning* argued throughout that a feme covert without her husband can not be party to any averment if she be not received through his default to defend her right; and she can not be received in this case through his default except for so much as is taken into the King's hand through his default; for that in particular and no more is to be lost through his default; and that is only a moiety. Notwithstanding, she had the averment, and this shall serve for the entirety.

Quare impedit.

(20.) § *Quare impedit* against the Abbot of Croyland, where the plaintiff counted of the presentation by his ancestor, and then showed that his ancestor granted to the predecessor of the existing Abbot that he should present on the next voidance, so that after that voidance the plaintiff and his ancestors should present; and he said that the predecessor of the existing Abbot presented by force of that grant at the next voidance after &c.; after the death of whose presentee the church is now vacant, and so it belongs to him to present.—The Abbot showed that he presented at the two voidances next preceding, and (inasmuch as the plaintiff admitted that his predecessor presented last, and affirmed that presentation to have been in his right by force of a grant, which lies in specialty, whereof he showed nothing) prayed a writ to the Bishop.—And the plaintiff avoided the

sa femme ussent pursuy laverement, et il ust passe pur eux, ne poient il aver saufve lenter? donqes serreit il countre resoun si ele ne poet ore aver mesme lavantage; qar autrement par le nomer destrange qe rienz nad et la defaute le baron, la femme perdra son dreit, ou ele est prest a defendre le; par quei il semble a la COURT qe si vous meintenez le primer averement qele est resceivable de lentier.—Par quei *Parn.* meintient qil sont tenantz en comune, prest &c.—*Et alii e contra.*—Et tiel averement serra pur tut, coment qe de la moyte ele fust resceivable sanz contrepleder. Et *quære*, si trove soit laverement pur la femme, le quel ele serra mys a pleder ou le bref abatra? qar si le baron et lui ussent tendu laverement, et ele ust passe pur eux, le bref ust este abatu. Et *credo* qe la femme avera ore mesme lavantage.—Mes *Parn.* dist tut temps[1] qe femme coverte sanz son baron ne poet estre partie a nul averement si ele ne fut resceu par sa defaute a defendre son dreit; et resceu ne poet ele estre en ceo cas par sa defaute fors de tant come est pris en la mayne le Roi par sa defaute, quele proprement et nient plus par sa defaute est a perdre, et ceo nest fors la moite. *Non obstante* ele ad laverement, et ceo servira al entier.

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(20.)[2] § *Quare impedit* vers labbe de Croiland,[3] ou le pleintif counta del presentement son auncestre, et puis moustra qe son auncestre granta al predecessour cesti abbe qil presentereit al proscheine voidance, issi qe apres cele voidance le pleintif et ses auncestres presenteroient; et dist qe le predecessour cesti abbe presenta par force de cel grant a la proscheine voidance apres &c., apres qi mort leglise est ore voyde; issint appent a lui a presenter.[4]—Labbe moustra qil presenta a les ij. dareins voidances devant,[5] et (de ceo qe le pleintif conust qe son predecessour presenta dreyn[6] et afferme cela en son dreit par force dun grant qe chiet en especialte de quei il ne moustre rien) il pria bref al Evesqe.—Et le pleintif voida par

Quare impedit.

[Fitz. *Monstrans de faits*, &c., 66.]

[1] 25184, touz jours.

[2] From 16560, 25184, T., and L. This is the conclusion of the case of which the commencement is in the Volume of Year Books 11 and 12 Edward III., p. 95.

[3] T., C.; L. Crouland; 16560, Gloucestre.

[4] The words a presenter are in 25184 only; 16560, &c.

[5] devant is in 16560 alone.

[6] dreyn is in 16560 alone.

A.D. 1338–9.

last two presentations by the Statute,[1] and said moreover that he would aver the grant; for the specialty ought not to remain with him, but with the grantee. And this plea was pending for two years until now. —SCHARSHULLE. Because you have admitted the presentation by the Abbot's predecessor, which put your ancestor out of possession, unless it was by reason of the grant which you offer to aver, and you do not show anything else, and the averment does not lie in this case, therefore let the Abbot have a writ to the Bishop, without inquiry as to collusion, for he showed royal confirmation of the advowson.

Entry sur disseisin.

(21.) § A writ of Entry *sur disseisin* was brought against B. *Gayneford* demanded the view.—*Trewith.* Heretofore we brought against you a writ of Entry *sur disseisin* and we demanded the same tenements against you, and upon that writ the view was granted; and the writ abated because his entry was by a person other than was supposed by the writ; judgment whether you ought to have the view.—*Gayneford.* It is expressed in the Statute[2] that if a writ abate for misnomer of a vill or the like, if the party had the view upon the first writ, he shall not have it upon the second; but the Statute does not mention the case in which the writ is abated for bad description of the entry.—SCHARDELOWE. The Statute expresses that the view is not to be granted except in cases in which it is necessary, but now you have had the view upon the first writ, and also the words "the like" are to be understood as well of bad description of the entry as of misnomer in any other respect.[3] And afterwards

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[1] Westm. 2. (13 Ed. 1) c. 5.

[2] Westm. 2. c. 48.

[3] There is a sentence in the Act more directly applicable to the case:—"In brevi etiam de ingressu cassato per hoc quod petens male nominavit ingressum, si petens suscitet aliud breve de alio ingressu, si tenens in priori brevi visum habuerit, in secundo non habebit."

statut les ij. dareins presentements, et dist outre qil voleit averer le grant, qar lespecialte ne deit pas demorer vers lui einz vers le graunte.—Et ceo plee pendy ij. aunz tanqe ore.—SCH. Pur ceo qe vous avez conu le presentement le predecessour Labbe quel mist vostre auncestre hors de possession sil ne fust par [1] resoun dun grant quel vous tendez daverer, et autre chose ne moustrez, et laverement ne gist pas en ceo cas, par quei Labbe eit bref al Evesqe sanz enquere de la collusion,[2] qar il moustra confermement des Rois de lavoeson. A.D. 1338–9.

(21.)[3] § Bref dentre sour disseisine fut porte vers B.—*Geign.* demanda la vewe.—*Trew.* Autrefoith nous portames vers vous un bref dentre sour disseisine et demandames mesmes les tenementz devers vous, a quel bref la vewe fut graunte, et le bref abati pur ceo qe soun entre fut par autre qe ne fut suppose par le [bref]; jugement si la vewe devez aver.—*Gaign.* Statut voet qe si bref abate par mal nomer de ville *vel hujusmodi*, sil avoit la vewe en le primer bref, il navera mye en le seconde, mes le statut ne parle mye la ou le bref est abatu par malveys entre.—SCH. Statut voet qe vewe ne soit mye grante mes en cas ou ele [est] necessarie, mes ore vous avez eu la vewe en la primer bref, et auxi le *hujusmodi* est a entendre auxi bien de malveys entre com il est en autre cas.— Entre sour disseisine.

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[1] L. de.

[2] The report ends here in 16560.

[3] From 16560 alone as far as the point at which the larger type ends.

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Gayneford said, Whereas you suppose that your father was disseised, he was never seised so that he could be disseised.—And the other side said the contrary.

Entry sur disseisine.

§ Entry *sur novel disseisin.* The tenant demanded the view. —*Trewith* alleged that he formerly had the view upon a similar writ brought between the same parties which was abated for misnomer i the clause of entry.—Wherefore he was ousted of the view.—*Rokell.* He was never seised so that he could be disseised.—And that issue could not be received; but he was driven to say that he did not disseise him; ready &c. —And the other side said the contrary.

Debt.

(22.) § Debt, where the defendant waged his law, and afterwards made default; wherefore the plaintiff recovered his debt and his damages in accordance with his count.

Debt.

(23.) § Debt, where the obligation was put forward. The defendant avoided it because at the making thereof he was in prison. And afterwards the defendant made default. Wherefore he was distrained to hear the inquest. It would have been otherwise if an acquittance had been put forward, for then he would have been distrained to hear his judgment. *Per* SCHARDELOWE.

Debt.

§ A writ of Debt was brought against one K. The plaintiff put forward an obligation. The defendant denied the deed. The *Venire facias* issued. When the *Venire facias* was returnable the defendant did not come. *Pole,* for the plaintiff, prayed judgment for the debt and his damages according to his count. But he did not have it, but an inquest upon the defendant's default. It would have been otherwise if an acquittance had been put forward.

Dower.

(24.) § Dower, where Fulk Fitz-Waryn the heir of the husband was vouched in the same county as that in which the writ was brought, and in two other counties; and he came and entered into warranty as one who had nothing by descent and rendered the dower. And the tenant said that he had assets in the counties in which he was vouched, and assigned the places with certainty. —STONORE, (to the tenant,) Has he assets by descent

Et pus *Gaign.* La ou vous supposez qe vostre pere fut disseisi il ne fut unqs seisi issint qe il ne poet estre disseisi.—*Et alii e contra.* A.D. 1338–9.

§ Entre[1] sur la novele disseisine. Le tenant demanda la vewe.—*Trew.* alleggea qe autrefoitz il avoit la vewe en autiel bref porte entre mesmes les parties qe fust abatu par mesnomer del entre. Par quei il fust ouste de la vewe.—*Rokel.* Il ne fust unqes seisi qil poet estre disseisi.—Et cel issu ne puit estre resceu, einz fust chace a dire qil ne lui disseisi pas; prest &c.—*Et alii e contra.* Entre sur disseisine. [Fitz. *View,* 100.]

(22.)[2] § Dette, ou le defendant gagea sa ley, et puis fist defaute; par quei le pleintif recoveri sa dette et ses damages solom qil avoit counte. Dette. [Fitz. *Condempnation,*20.]

(23.)[3] § Dette, ou obligacion fust mist avant. Le defendant le voida purceqe a la fesaunce il fust en prisone. Et pus le defendant fist defaute. Par quei il fust destreint doier lenquest. *Secus fuisset* si acquitance ust este mys avant, qar donqes il ust este destreint doier son jugement. Par SCHD. Dette. [Fitz. *Condempnation,*21.]

§ Bref[4] de dette porte vers un K. Le pleintif mist avaunt obligacion. Il dedit le fait. Le *Venire facias* issit. Al *Venire facias* retournable il ne vint pas. *Pole,* pur le pleintif, pria la dette et ses damages come il avoit counte. *Sed non habuit* einz lenqueste par sa defaute. *Secus* si acquitaunce eust este mys avaunt. Dette.

(24.)[5] § Dower, ou Fouke fitz Waryn leir le baron fust vouche en mesme le counte ou le bref fust porte, et deus autres countes, qe vient et entra come celui qe rien navoit par descente et rendist dowere; et le tenant dist qil ad assetz en les countez ou il fust vouche, et assigna les lieux en certein.—STONOR, al Dowere. [Fitz. *Jugement,* 165.]

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[1] This report of the case is from T., L., and 25184.

[2] This case is from T., L., and 25184.

[3] From T., L., and 25184, as far as the point at which the larger type ends.

[4] This report of the case is from 16560.

[5] From T., L., and 25184 as far as the point at which the larger type ends.

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in fee simple in the same county as that in which the demand is ?— *Gayneford.* Not separately.— SCHARDELOWE (by the assent of the Court) The COURT adjudges that the woman do recover her dower against the tenant, and that the tenant do recover over to the value against the vouchee, and that the vouchee be in mercy.—And the reason was that otherwise she would be always delayed of her dower; for if she had been delayed until the averment had been taken, whether he had anything by descent or not, it would have been at the will of the tenant and the warrantor to have delayed the Inquest &c. It would have been otherwise if he had been vouched only in the county where the demand was, in which case the judgment would have been conditional.

Dower.

§ A writ of dower was brought against J. and he vouched to warranty [the heir] of the woman's husband, who entered &c. as one who had nothing by descent.—*Gayneford.* You have assets in S. and in T. in different counties. And it was said that the woman shall never have execution now, because the land which the tenant says that the vouchee has by descent is in another county. And S. was in the same county as that in which the woman made her demand, but he had not assets in that county, &c. And afterwards it was adjudged that the woman should recover.

Process.

(25.) § Note that, where the tenant had vouched, at the *Sequatur suo periculo* he made default; and no writ was returned, and the Petit *Cape* was awarded.

Note.

(26.) § Note that when one prays to be received and the receipt is counterpleaded, he can make his attorney by writ, pending the receipt. It is otherwise by bill.

Secta ad Molendinum.

(27.) § *Secta ad Molendinum,* by five *Prœcipes* in the *Debet et solet.* One prayed aid, as tenant by the curtesy of England; another prayed aid as tenant for

tenant,[1] Ad il assez par descente[2] en fee simple en mesme le counte ou la demande est ?— *Gayn.* Nient a per lui.— SCHD. *ex assensu Curiæ.* Cy agarde la COURT qe la femme recoverie son dowere vers le tenant, et le tenant outre[3] a la value vers le vouche, et le vouche en la mercye.—Et la cause fust pur ceo qautrement ele serreit delaye touz jours de son dowere; qar si ele ust este delaye tanqe laverement ust este pris lequele il[4] ad par descente ou noun, ceo ust este a la volunte le tenant et le garrant daver[5] delaye lenquest, &c. *Secus esset* sil ust este vouche soulement en mesme le counte ou la demande est, en quel cas le jugement ust este condicionel. A.D. 1338–9.

§ Bref[6] de dowere fut porte vers J. et il voucha a garrant le baroun la feme qe entra &c. com celuy qe rien nad par descente.—*Geign.* Vous avez assez en S. et en T. en diverses countez. Et dit feut qe la femme navera mye execucion meintenaunt pur ceo qe la terre qe il dit qe il ad par descente si est en autre counte. Et S. feut en mesme le counte ou la femme fist sa demande, mes il navoit mye assez en cele counte &c. Et peus fut agarde qe la femme recoverist. Dowere.

(25.)[7] § *Nota* qe, la ou le tenant avoit vouche, al *Sequatur suo periculo* il fist defaute, et nul bref fust retourne, et le Petit *Cape* fust agarde. Proces.

(26.) § *Nota* qe quant un prie destre resceu, et la resceite soit contreplede, qil poet faire son attourne par bref, pendant la resceite.—*Secus est* par bille. Nota.

(27.)[8] § Suyte de molyn par v. *Præcipes* en le *Debet et solet.* Un pria eide come tenant par la ley Dengleterre; un autre pria eyde[9] come tenant a terme de Sute de Mulyn. [Fitz. *Ayde*, 26.]

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[1] The words al tenant are not in T.

[2] The words par descente are in 25184 only.

[3] T. and L. il, instead of le tenant outre.

[4] T. sil, instead of lequele il.

[5] In T. the word este is inserted after daver.

[6] This report of the case is from 16560 alone.

[7] This and the following note are from T., L., and 25184.

[8] From T., L., and 25184 as far as the point at which the larger type ends.

[9] eyde is not in in T.

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term of life; another prayed aid as tenant in dower; another said that the plaintiff was never seised; another alleged joint-tenancy with his wife; another vouched to warranty. And as to the aid-prayers they were counterpleaded, because the writ was brought against the defendants *de leur tort demesne* and for withdrawing their suit, for which aid is not grantable. And nevertheless, because the suit is to be deraigned in the right, it seemed to the COURT that the aid was grantable. Wherefore with respect to the tenant for term of life, *Pole* said that he had a fee simple; ready &c. And the other side said the contrary. And with respect to the others the aid was granted. And with respect to the one who alleged joint tenancy, *Pole* said that he was sole tenant; ready &c. And the other side said the contrary. And as to another who said that the plaintiff was never seised, *Pole* maintained his seisin. And as to the voucher *Pole* said that the voucher did not lie, for the suit does not lie in extent, nor can process be made upon the voucher; wherefore &c.—*Parning.* We show that he who enfeoffed us in his time did not do the suit, so we have a warranty to hold the land discharged, and it is at our peril if process cannot be made; and without judgment we will not pass.—And by judgment they were ousted of the voucher.

Secta ad Molendinum.

§ A writ of *Secta ad Molendinum* was brought against two several tenants for that they ought to grind all the corn growing on twenty acres of land, paying the tenth dish as toll, of which suit to the mill the plaintiff himself was seised.—*Rokell*, for the first, said, We hold the tenements in respect of which you demand the suit, by the curtesy of England, &c., of the inheritance of J.; and we pray aid, &c.; and we tell you that J. is under age, and we pray, &c. And, as to the second *Præcipe*, one J. was seised of the same land discharged; and he enfeoffed our father in fee tail; and in respect of that estate we vouch to warranty J. as heir in tail.—*Pole.* As to the aid-prayer the plantiff has counted of his own seisin and that you withdraw the suit; wherefore, in respect of a tort committed by

vie; un autre pria eide come tenant en[1] dower; un autre dist qe le pleintif ne fust unqes seisi; un autre alleggea joynttenance ove sa femme; un autre voucha a garrant. Et qant a les eide prieres eles furent contrepledez, pur ceo qe le bref fust porte vers eux de lour tort demene et lour sustrere, de quei eide nest pas grantable. *Et tamen*[2] purceqe la suyte est a derener en le dreit, sembloit a la COURT qe leide est grantable. Par quei al tenant a terme de vie *Pole* dit qil avoit fee simple; prest &c. *Et alii e contra.* [Et quant as autres laide fut grante. Et quant a celuy qe alleggea joyntenaunce il dit qil fut soul tenaunt; prest &c. *Et alii e contra.*][3] Et quant a un autre qe dit qe le pleintif ne fust unqes seisi, il mayntient sa seisine. Et quant a voucher, *Pole* dist qe le voucher ne gist pas, qar la suyte ne chiet[4] pas en extente, ne proces ne poet estre fait sur le voucher; par quei &c. —*Parn.* Nous moustroms qe celui qe nous enfeffa en son temps ne fist pas la suyte, issi avoms garrantie a tenir la terre descharge, et cest a nostre peril si proces ne se poet pas faire; et[5] saunz agarde[6] nous ne[7] passeroms.—Et par agarde ils furent oustes del voucher.

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[Fitz. *Jointenaucy*, 13.

[Fitz. *Voucher*, 116.]

§ Bref[8] de suyte de molyn fut porte vers ij. severals tenauntz qil dussent moudre toutz les blees cressauntz en xx. acres de terre, al x. vessel, de quel sute il mesme fut seisi—*Rokel*, pur le primer, Nous tenoms les tenementz dount vous demandez la suyte par ley Dengleterre, &c. del heritage J. et prioms eyde &c., et vous dioms qil est deinz age, et prioms &c. Et qaunt al seconde *Præcipe* un J. fut seisi de mesme la terre descharge, et enfeffa nostre pere en fee taille; et, de cel estat, vouchoms a garrant J. come heir en la taille.—*Pole.* Qaunt al prier eyde il ad counte de sa seisine demene, et qe vous sustretes la sute; par quei de

Suite de Molyn.

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[1] L. en noun de.

[2] The words *et tamen* are not in 25184.

[3] The words between brackets are not in T.

[4] 25184, gist.

[5] et is not in L.

[6] agarde is not in 25184.

[7] ne is in T. only.

[8] This report, which is probably one of the same case, is in 16560 only.

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yourself you ought not to have aid.—*Pole* continued, As to the voucher, it is a denial of our action, wherefore we will aver that we ought to have the suit of that land.—*Parning.* He held the land discharged, and enfeoffed (as above).—*Pole.* We bring this writ as upon our own seisin, and you vouch in respect of something else which is not in demand, and which does not lie in extent; judgment whether you ought to be received to this voucher.—SCHARDELOWE. If the vouchee make default, what process would there be against him?—as meaning to say—By common course there are Summons and *Cape*, whereas the Original has in this case been continued by Summons, Attachment and Distress. So the process against the warrantor varies from the process against the defendant. Besides, what can be taken to the value as against the warrantor of the land? The defendant does not suppose that anything can be taken for the suit to the mill because the warrantor is not vouched in respect of that, but of the land which is not in demand.—SCHARDELOWE to *Pole.* With regard to your counterplea of the aid, there is no other case (except that of suit to a mill), in which the demandant counts of his own seisin, where aid shall not be had, even though he count that the tenant himself has withdrawn.—*Stouford.* In respect of rent charge aid shall not be had.—As to the aid-prayer, the aid was granted, and as to the voucher he was ousted because process could not be made against the vouchee.

Secta ad Molendinum.

(28.) § *Secta ad Molendinum,* where, after the view had been demanded, the defendant made default; whereupon in lieu of the Petit *Cape,* the Distress issued; and again he made default; wherefore it was adjudged that the plaintiff should recover the suit to the mill and his damages, because the writ was in the *Solet;* but execution shall stay until inquiry be made touching collusion, because the plaintiff is an Abbot; and by the same Inquest inquiry shall be made of his damages, in case collusion be not found.

Secta ad Molendinum.

§ A writ of *Secta ad Molendinum* was sued against J. He prayed the view, and it was granted; and afterwards he made default; wherefore a Grand Distress was adjudged. He did not now come; wherefore it was adjudged that the Abbot should recover the suit to the mill and his damages, but that execution should be stayed until inquiry had been made respecting collusion, because he was a man of religion, and

vostre tort demene ne devez eyde aver.—*Pole.* Qaunt a voucher il est revers a nostre accion, par quei nous voloms averer qe nous averoms la suyte de cele terre.—*Parn.* Il tient la terre descharge et enfeffa *ut supra.*—*Pole.* Nous portoms cestuy bref de nostre seisine demene, et vous vouchez dautre chose qe nest en demande ne chiet pas en estent; jugement si a ceo voucher devez estre resceu.—Sch. Si le vouche feit defaute, quel proces serreit devers lui?—*quasi diceret* de comune cours summons et *Cape*, ou cest original est plede par somons, attachement, et destresse. Issint le processe vers le garrant varie al proces vers le defendaunt. *Item*, quele chose prendreit homme a la value vers le garrand de sa terre? *Non ponit* pur la suyte, qar de ceo nest il mye vouche einz de la terre qe nest pas en demande.—Sch. a *Pole*, En dreit de vostre contreplee del eide il nest pas descoun chose qen suyte de molyn ou le demandaunt counte de sa seisine demene qil navera eide tut soit il qil counte qe le tenaunt mesme lad sustrest.—*Stouf.* De rente charge il navera pas eyde.—Qaunt al eide, leide fut graunte, et qaunt a voucher il feut ouste pur ceo qe homme ne put mye faire proces devers le vouche. A.D. 1338–9.

(28.)[1] § Suyte de molyn, ou apres vewe demande le defendant fist defaute; sur quei en lieu de petit *Cape* la destresse issit; et autrefoitz il fist defaute; par quei agarde fust qe le pleintif recoverist la suyte et ses damages, purceqe le bref fust en le *Solet*, mes execucion cessera tanqe enquis soit de la collusion, pur ceo qe[2] le pleintif est un Abbe; et par mesme lenqueste enquis serra[3] de ses damages en cas qe collusion ne soit pas trove. Sute de Molyn. [Fitz. *Collusion*, 31.]

§ Bref[4] de suyte de molyn fut suy vers J. Il demanda la vewe, et fut graunte; et puis il fist defaute; par quei un graunt destresse fut agarde. Ore il ne vient pas; par quei agarde fut qe Labbe recoverist la sute et ses damages, mes qe execucion cessast taunqe enquis fut de la collusion, pur De Suyte de Molyn.

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[1] From T., L., and 25184 as far as the point at which the larger type ends.

[2] T. qar instead of pur ceo qe.

[3] T. enquerra homme; L. enquerra la court.

[4] This report of the case is from 16560 alone.

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that those who constituted the Inquest which was to try the collusion should tax the damages &c.

Ejectment from Wardship.

(29.) § Ejectment from Wardship of land and rent; and the writ supposed that the infant's ancestor held of the Archbishop of Canterbury, who leased the wardship to him (the plaintiff) by which lease he was seised &c. And the writ was brought against a woman only.—*Trewith.* Judgment of the writ; for it supposes that the rent can be held of a lord, whereas rent can not be so held; for the tenant of the land is mesne having regard to his lord, of whom he holds the land and not the rent; and besides, writs of Wardship, Escheat and *Cessavit* are not given for rent.—And *Parning* affirmed this.—SCHARDELOWE. If he was seised of the rent in name of wardship he can not demand it by the writ of ejectment from wardship of the land.—*Parning.* True; nor can he be ejected from the rent; for he can only have it by delivery by the tenant, and tort can not be done to him except by the tenant, and that by refusal, and then he can distrain, in which case he will still say that the land is holden and not the rent. — And afterwards he pleaded over *gratis,* and said that neither the land nor the rent was holden of the Archbishop, but of other lords in socage, wherefore the heir seeing that such abatement would be to his disinheritance, and the woman against whom the writ was now brought, perceiving that the wardship belonged to her because the land was holden in socage, entered on the same land; judgment whether you can establish any wrong in the person of the woman.—*Gayneford* said *gratis* that the land was held in chivalry of the Archbishop; ready &c.—And the other side said the contrary.—*Quære* whether the woman could have justified this act by herself if the heir had not been a party to it; for a guardian *de jure* can not oust

ceo qil fut homme de religion, et ceux del enquest qe deivent trier la collusion deivent taxer les damages, &c. A.D. 1338–9.

(29.)[1] § Engettement de garde de terre[2] et rente; et suppose qe launcestre lenfant tient del Erchevesqe de Caunterbury qe ly lessa la garde, par quel lees il fust seisi &c. Et le bref fust porte vers une femme soulement. — *Trew.* Jugement du bref, qar il suppose qe la rente poet estre tenu dun seignur ou ele ne poet[3] pas, qar meen est tenant de la terre eant regard a son seignour, et de lui tient il la terre et noun pas la rente; [et ovesqe ceo bref de Garde jammes ne bref Deschete ne *Cessavit* ne sont pas done de rente. *Et hoc*][4] *Parn. affirmavit.* — SCH. Sil fust seisi en noun de garde de la rente il ne la[5] poet pas demander par bref dengettement la terre. — *Parn.* Cest verite, ne il ne poet estre engette de la rente; qar il ne poet aver forsqe par livere del tenant, ne tort ne lui poet estre fait forqe par le tenant, et ceo par veier, et donqes puit il destrindre, en quel cas uncore il dirra qe la terre est tenu et noun pas la rente.—Et puis de gree il dist outre, et dit qe la terre ne la rente ne furent pas tenuz del Ercevesqe einz des autres seignours en socage; par quei leir veant tiel abatement estre en desheritison de lui, et la femme vers qi le bref est ore porte, aperceyvant qe la garde attient a lui purceqe la terre fust tenu en socage, se mistrunt einz en mesme la terre; jugement si tort en la persone la femme puisses attacher.—*Gayn. gratis*[6] dit[7] qe la terre est tenu en chivalerie del Ercevesqe; prest &c.—*Et alii e contra.*—*Quære* si la femme puet aver justifie ceo fait a per lui qant leir nest pas partie; qar gardein de dreit ne

Engettement de Garde. [Fitz. Garde, 38.]

[1] From T., L., and 25184 as far as the point at which the larger type ends.

[2] The words de terre are not in L.

[3] 25184, fut.

[4] The words between brackets are in 25184 and T., but not in L.

[5] la is in L. but not in T. or 25184.

[6] *gratis* is not in T.

[7] dit is in 25184 alone.

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a guardian *de facto* where he has entered by virtue of a lease from another; but the heir can, because he is the disseisor of the heir.

Ejectment from Wardship.

§ A writ of Ejectment from Wardship was brought against Alice mother of the ward. *Pole* counted how the ancestor of the infant who was in the plaintiff's wardship held 10*s*. of rent of the Archbishop of Canterbury, who leased to him the wardship, and showed how he was ejected.—*Trewith.* Sir, he makes use of this action because the ancestor of the infant held of the Archbishop &c., who leased to him the wardship, &c., 10*s*. of rent, whereas it is not intendable in law that rent can be so held.—*Gayneford.* It is sufficiently intendable, for if I bring a writ of right in the court of my lord my writ will be in the words "that you do full right" in respect of so much rent, "which he claims to hold of you," &c. —*Trewith.* One shall not have avowry in such a case, nor writ of Wardship or Escheat &c.—But this was denied.—*Trewith.* Whereas you have counted that the ancestor of the infant held of the Archbishop of Canterbury by knight-service, he held of the Archbishop in socage, and the infant therefore perceiving that you had abated upon him ousted you inasmuch as the wardship belongs to his mother because of nurture; judgment whether you can have an action.—*Gayneford.* We have said that we have the wardship by virtue of a lease, and you say that we have abated upon you, which goes to the abatement of our writ; and we will aver that he leased, and not otherwise.—*Gayneford.* Whereas you have said that he holds of the Archbishop in socage, he holds of the Archbishop by knight-service; ready &c.—And the other side said the contrary.

(30.) Note. A woman, received through the default of her husband, vouched one to warranty.—*Pole.* He whom she vouches is dead; judgment.—And notwithstanding, the voucher was held good, and, by judgment, stood.

Voucher.

§ A writ was brought against a tenant. He vouched to warranty. The demandant said that the vouchee was dead; and, because that answer did not come by way of return from the Sheriff, the voucher stood by judgment of the Court, &c.

Præcipe quod reddat.

§ (31.) *Præcipe quod reddat,* against "Ralph le Fitz William la Zouche Mortymer;" and a Protection was

poet pus ouster gardein de fet ou il est entre par autri lees; mes leir poet pur ceo qil est[1] son disseisour. A.D. 1338–9.

§ Bref[2] dengettement de garde fut porte vers[3] Alice sa mere. *Pole* counta coment launcestre lenfaunt quel est en sa garde tient del Evesqe de K. x. *s.* de rente le quel luy lessa la garde, et moustra coment il fust engette.—*Trew.* Sire il use cest accion par resoun qe launcestre lenfaunt tient del Evesqe &c., quel lessa la garde a luy &c., x. *s.* de rente, ou ceo nest my entendable en ley qe rente peuse estre tenuz &c.; jugement de bref.—*Gaign.* Cest assez entendable qar si jeo porte bref de dreit en la court moun seignour moun bref dirra *quod plenum rectum teneas* de taunt de rente *quod clamat tenere de te* &c.—*Trew.* Homme navera nul tiel avowerie ne bref de garde, ne eschete &c.—*Quod fuit negatum.*—*Trew.* La ou vous avez counte qe launcestre lenfaunt tient del Evesqe de Caunterbury par service de chivalere, il tient de luy en sokage, et lenfaunt apercevaunt qe vous abatastes vous a ceste il ousta issu com a mere append la garde par resoun de nurture; jugement si accion poiez aver.—*Geign.* Nous avoms dit qe nous avoms la garde par cause de lees, et vous ditez qe nous abatames, quel chose est en abatement de nostre bref; et nous voloms averer qe il lessa *et non aliter.*—*Gaign.* La ou vous avez dit qil tient del Ercevesqe en sokage il tient de luy par service de chivalere; prest &c.—*Et alii e contra.* Engettement de Garde.

(30.)[4] § *Nota:* une femme resceu par la defaute son baron voucha a garraunt un.—*Pole.* Celui qele vouche est mort; jugement. Et *non obstante* le voucher fust agarde bon, et estut par agard. [Fitz. *Counterple de Voucher,* 73.]

§ Bref[5] fut porte vers un tenaunt. Il voucha a garraunt. Le demandaunt dit qe le vouche fut mort; et pur ceo qe il ne vient mye par retourn de Vicounte, le voucher esteut par agarde de la Court &c. Voucher.

(31.)[6] § *Præcipe quod reddat* vers Rauf le fitz William la Zouche[7] Mortymer; et Proteccion fust mys Præcipe quod reddat.

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[1] L. and 25184, ad.

[2] This report of the case is from 16560 alone.

[3] MS. et.

[4] From T., L., and 25184.

[5] The note in this form is from u 10591. 16560, in which MS. it appears as of Easter Term.

[6] From T., L., and 25184 as far as the point at which the larger type ends.

[7] 25184, Le Souche.

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put forward in the words, "*Suscepimus in protectionem* "*&c. Radulfum filium Willelmi le Zouche de Mortuo* "*Mari;*" and on account of the variance the Protection was disallowed; but if in the writ he had been named "de Mortymer" it would have been allowed.

Protection.

§ A writ was brought against W. de la Souche de Mortmer.—*Gayneford*, for W., See here is a Protection; and it was read; and the words were "*W. Souche de Mortuo Mari*" without "*de.*" —*Parning.* The Protection is not in accordance with the writ, wherefore the Protection cannot be allowed to him, for suppose a writ to be brought against "Richard fitz Simond," and he puts forward a Protection in the words "Richard fitz Simond," the Protection will be disallowed. And the Protection was disallowed.

Note.

(32.) § Note that the *Elegit* was sued upon a recognisance.—*Trewith* came after the extent and livery had been made and showed an acquittance for part of the debt, and as to the rest said that the extent was badly made, and prayed a new extent and also a writ to warn the party to answer for his deeds; and this was not granted; for the suit is terminated, and it is necessary that he should have recourse to the original writ on which the matter may be tried.

Debt.

(33.) § Debt against the Sheriff, in a case in which he had allowed the recognisor by statute merchant to go at large, without making satisfaction; and the writ was in common form, and the plaintiff counted according to his case.—*Parning.* It is expressed in the Statute[1] that the sheriff shall answer for the body or for the debt, and he has not surmised that we have not the body; so he has not observed the statute upon which this writ would be maintained; judgment of the declaration.—SCHARSHULLE. That will come by way of answer; wherefore answer.—*Parning.* We tell you

[1] 13 Edw. I. st. 3, according to which it is the keeper of the prison who must answer.

avant, qe voleit, *Suscepimus in protectionem &c. Radulfum filium Willelmi le Zouche*[1] *de Mortuo mari,* et pur la variance la Proteccion fust desalowe; mes si en le bref il ust este nome de[2] Mortymer il ust este allowe.[3] A.D. 1338–9. [Fitz. *Variauns,* 80.]

§ Bref[4] fut porte vers W. de la Souche de Mortmer.—*Gaign.,* pur W., Veez cy Proteccion; et fut lieu; et voleit *W. Souche de Mortuo Mari* saunz *de.*—*Parn.* La Proteccion nest mye accordaunt al bref, par quei la Proteccion ne luy put tenir lieu, qar mettoms qe bref seit porte vers Richard fitz Simond,[5] et il met avaunt Proteccion qe veut Richard fitz Simond,[5] la Proteccion serra desalowe. Et la Proteccion fut desalowe. De Protectione.

(32.)[6] § Nota qe hors dune reconisance le *Elegit* fut suy.—*Trew.* vient apres lestent fait et livere, et mostra[7] de partie de la dette acquitance et del remenant il[7] dit qe lestent[8] fust malement fait, et pria un reestent, et auxi bref de garnir la partie de respondre a ses fetz; et ceo ne fust pas grante, qar la suyte est termine, et covient qil aile al original sur quei la chose purra estre trie. Nota. [Fitz. *Extent,* 16.]

(33.)[9] § Dette vers le Vicounte, ou il soeffri le reconisor par estatut marchaunt aler a large, son gree nient fait; et le bref fust comune, et il counta solom son cas.—*Parn.* Lestatut voet qe le Vicounte respondra del corps ou de la dette, et il nad pas surmys[10] qe nous navoms pas le corps, issi nad il pas servi lestatut sur quei ceo bref serreit meintenu; jugement de la demoustrance.—SCH. Ceo vendra par voie de respons; par quei responez.—*Parn.* Nous vous dioms Dette.

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[1] 25184, *filium la Souche.*

[2] L. le.

[3] Both 25184 and Fitz, add here:—pur variance entre le bref et le proces; but these words should obviously be inserted after the word desalowe, if at all.

[4] This report of the case is from 16560 alone.

[5] *Sic* in MS.

[6] From T., L., and 25184.

[7] T. and 25184, moustra partie de la dette et acquitance del remenant et.

[8] L. lestatut.

[9] From T., L., 16560 and 25184.

[10] 25184, dit.

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that the King's writ came to us to deliver the body of the recognisor to our successor; and we tell you that by force of this writ we delivered the body to him; and by this indenture &c.; and it is expressed in the Statute that we shall answer for the body or for the debt; judgment, since we have answered sufficiently for the body, whether an action of debt against us &c.—*Gayneford.* Our action accrues because you suffered the recognisor to go at large, which thing we will aver; and besides, we sued a writ to your successor to deliver to us the lands of the debtor and to retain him prison &c., and he returned to the writ that you had not delivered the body to him; and thus the debtor was suffered to go at large, which thing you do not deny; judgment.—*Parning.* If we had him not on one day it may be that we had him on another day; and since you do not deny that we delivered him to our successor, we thus answer for his body; judgment. —And so to judgment.—And they were adjourned.—*Quære* the judgment in next Trinity term.[1]

Replevin.

(34.) § John de Holond complained that the Earl of Lancaster tortiously took his beasts.—*Pole* avowed &c. for the reason that Robert Berte held the manor of C. of Robert de Ferrers formerly Earl of Derby by homage, &c., and suit to his Hundred of S. &c., as services regardant to the manor of Heigham Ferrers, and that

[1] Trinity, 13 Edward III., No. 42.

qe bref le Roi nous vynt de liverer le corps le reconisour a nostre successour; et vous dioms qe par force de cel bref nous liverames le corps a lui, et par ceste endenture &c.; et lestatut voet qe nous respondroms del corps ou de la dette; jugement, depuis qe suffisauntement avoms respondu del corps, si accion de dette vers nous &c.—*Gayn.* Nostre accion acrest pur ceo qe vous suffristez le conisour aler a large, quele chose nous voloms averer; et, ovesqe ceo, nous suymes bref a vostre successour de nous liverer les terres le dettour et de le retenir en prisone &c., et il retourna le bref qe vous ne lui aviez pas livere le corps; et issi fust il suffert daler a large, quele chose vous ne dedites pas; jugement.—*Parn.* Si nous nel avioms point al un jour nous lavioms a un autre par cas; et del hour qe vous ne dedites pas qe nous luy liverames a nostre successour issi respondoms de son corps; jugement.—*Et sic ad judicium.—Et adjornantur.*[1]—*Quære judicium termino Trinitatis proximo.* A.D. 1338–9.

(34.)[2] § Johan de Holond se pleint qe le Counte de Lancastre atort prist ses avers.—*Pole* avowa &c. par la resoun qe Robert Berte tynt le manoir de C. de Robert de Ferrers jadis Counte de Derby par homage &c., et sute a soun Hundred de S. &c. com services regardauntz al manoir de Heigham Ferrers et pus, Replegiari.

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[1] In 16560 the report concludes thus:—Pur ceo qe ne fut pas dedit qe il ne fut lesse aler a large, agarde qe le pleintif recoverist, &c. This is in accordance with the judgment given in the following Trinity Term (No. 42). In 25184 the judgment is here given as it appears in Trinity Term in T., &c.

[2] From 16560 alone as far as the point at which the larger type ends. The insertion of the names of persons and places has rendered it possible to compare this report of the case with the record *Placita de Banco*, Hilary Term 13 Ed. 3. On Roll 290 is a case (probably the same as that reported) in which *Robert* de Holand is plaintiff, and Henry Earl of Lancaster, and Ralph de Listere are defendants. The manor called "C." in the report, appears in the record as Chelveston, and the person who held it not as Robert Berte but as Richard Syward, whose son, John, enfeoffed Thomas Earl of Lancaster.

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afterwards, through the forfeiture of Robert, King Henry seized the Earldom and the manor into his hand, and afterwards gave the manor to his son Edmund—to him and the heirs of his body begotten &c. From Edmund the manor of Heigham Ferrers, to which the services are regardant, descended to T. as to son and heir. And we tell you that T. the son of Edmund purchased of Robert Berte the manor of C.—to him and to his heirs—and afterwards leased the same manor back to this same Robert for term of life, and afterwards granted the reversion to Robert de Holond father of the present plaintiff, in virtue of which grant Robert attorned. From Thomas, because he died without heir of his body begotten, the seignory [1] descended to the Earl who now avows. And afterwards Robert died, and after his death Robert de Holond entered, and we were seised of these services through the hand of Robert &c. From Robert the manor of C. descended to John, the present plaintiff, as to son and heir. And we thus avow because the homage was in arrear, &c.—*Pole.* At the commencement of his avowry he said that R. de B. held the manor of C. by homage &c. and suit to his Hundred of S. &c., as services regardant to the manor of Heigham Ferrers, so that at the commencement of his avowry he supposed that it was suit royal, and afterwards he shows that it is suit service; judgment of this avowry.—SCHARDELOWE. He does not avow for the suit, wherefore we hold this avowry good enough, though perhaps, if he had avowed for the suit, the avowry would be bad; wherefore answer.—*Rokell.* T. of Lancaster, brother of the Earl who now avows, whose heir the Earl is, leased the same tenements to R. for term of life, and afterwards granted the reversion in fee to R., our father, to hold of the chief lord; wherefore R. made his intendance to the King who was chief lord; and we, since the death of R., our father, have done homage to the King; thus we are the King's tenant; judgment whether he can avow this

[1] The words in the corresponding passage in the record are *jus dominii.*

par la forfeture Robert, le Roy H. seisi le Counte et le manoir en sa mayn, et pus dona le manoir a Edmound soun fitz a luy et ses heirs de soun corps engendrez &c. De Edmound descendi le manoir de[1] Heigham Ferrers a quel les services sount regardaunts a T. com a fitz et heir. Et vous dioms qe T. le fitz Edmound purchacea de Robert Berte le manoir de C.[2] a luy et a ses heirs, et pus lessa mesme le manoir arrere a meme cestuy Robert a terme de vie, et pus graunta la reversion a Robert de Holond piere mesme cestuy qe se pleint, par vertue de quel graunt Robert attourna. De Thomas pur ceo qil morust saunz heir de soun corps descendi al Counte qe ore avowe. Et pus apres Robert morust, apres qi mort Robert de Holond entra, des queux services nous feumes seisi par mye la mayn Robert &c. De Robert descendi &c. a Johan com a fitz et heir qe ore se pleint. Et pur ceo qe le homage fut arere si avowoms &c.—*Pole.* Al comencement de savowerie il dit qe R. de B. tynt le manoir de C. par homage &c., et sute a soun hundred de S. &c., come services regardauntz al manoir de Heigham Ferrers, issint qe al comencement de savowerie il supposa qe cest sute real, et pus apres il moustre qe cest sute service; jugement de cest avowerie.—Sch. Il avowe mye pur la sute, par quei nous tenoms cest avowerie assez bon, mes par cas sil avowast pur la sute lavowerie serreit malveis; par quei responez.—*Rokel.* T. de Lancastre frere le Counte qe ore avowe, qi heir il est, lessa mesmes les tenementz a R. a terme de vie, et pus graunta la reversion en fee a R. nostre pere a tenir del chef seignour; par quei R. fist sa entendance al Roy qe feut chef seignour; et nous, pus la mort R. nostre piere, avoms fait homage al Roy; issint sumes nous tenaunt le Roy; jugement si sour

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[1] MS. et de.

[2] MS. T.

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distress upon us. — *Stouford.* Put it with certainty whether T. of Lancaster, of whom you speak, is the same person that we call T. son of E. or not; for if he be another person, that is not to the purpose.—*Parning.* That will come from you, for we show that we are the King's tenant, and that ought to suffice for us. And afterwards *Parning* said that T. of Lancaster, and T. son of E. were one and the same person. And, inasmuch as the seignory was extinguished by T.'s purchase of the demesne, and he by his grant made our father immediate tenant to the King, judgment, &c.—*Pole.* And we also pray judgment since he had only a fee tail in the seignory so that he could not extinguish the entail by his purchase, and particularly when the services were regardant to the manor of which we are seised through the entail, &c.—And so to judgment, &c.—Whereupon it was adjudged that he should have the Return, &c.

Avowry.

§ Avowry for the Earl of Lancaster, for the reason that one A. held of R. Earl of Derby by homage &c. and suit to his Hundred, as services regardant to the manor of H.; which Earl was seised by the hand of the said A.; and afterwards by the forfeiture of the Earl that manor and other lands &c. came into the hand of King Henry, who gave that manor to his son E. in fee tail, by force of which gift E. was seised by the hand of A.; from E. the seignory &c. descended to T. as son; and from T. it descended to H., who now avows, as brother. From A. the demesne descended to B., which B. gave the tenements to T. the son of E. in fee simple in the time of King Edward the father; which T. leased the same tenements to C. for term of life, and afterwards granted the reversion to R. the father of R. the present plaintiff; and for homage in arrear the Earl avows as on his tenant in the form aforesaid &c.—*Rokell.* Judgment of the avowry, for he supposes the land to be holden by suit to a hundred, which is suit royal and not suit service.—SCHARDELOWE. He does not avow for that; wherefore answer. — *Rokell.* T. of Lancaster brother of the Earl who avows, whose heir the Earl is, leased the same tenements to C. for term of life, and afterwards granted the reversion in fee simple to R. our father, whose heir we are, to

nous pusse cele destresse avower.—*Stouf.* Mettez en certeyn le quel T. de Lancastre de qui vous parlez soit mesme la persone qe nous nomoms T. fitz E. ou noun, qar sil soit autre persone il nest mye apurpos. —*Parn.* Ceo vendra de vous, qar nous moustroms qe nous sumes tenaunt le Roy, et ceo nous deit suffire. Et peus *Parn.* dit qe T. de Lancastre et T. fitz E. sount tut un persone. Et, de pus qe par le purchase T. del demene la seignurye fust esteint, et il par son graunt fist nostre piere tenaunt al Roy immediate, jugement &c.—*Pole.* Et nous jugement de pus qe il navoit en la seignurye fors qe fee taille, ou par son purchase ne put la taille esteindre, et nomement qaunt les services furent regardauntz al manoir de quel nous sumes seisi par la taille &c.—*Et sic ad judicium* &c.—Par quei agarde fut quil ust retourn &c.

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§ Avowerie[1] pur le Count de Lancastre, par la resoun qun A. tynt de R. Count de Derby par homage &c. et suyte a son hundred, come des serviz regardants al manoir de H. quel Count fust seisi par la mayne le dit A., et puis par la forfaiture de Count cel manoir et autres terres &c. devyndrent en la mayne le Roi H., qe dona cel manoir a E. son fitz en fee taille, par quel don E. fust seisi par la mayn A.; de E. descendi la seignurie &c. a T. com a fitz; de T. descendi a H.[2] come a frere qore avowe. De A. descendi le demene a B., quel B. dona les tenementz a T. fitz E. en fee simple en temps le Roi E. le pere; quel T. lessa a C. mesmes les tenementz a terme de vie, et puis granta la reversion a R. pere[3] R. qore se pleint; et pur homage arrere il avowa come sur son tenant en la forme avantdite &c.—*Rokel.* Jugement de lavowerie, qar il suppose la terre estre tenu par suyte a hundred quele suite est reale et noun pas serviz.—Sch. Il navowe pas pur cel,[4] par quei responez.—*Rokel.* T. de Lancastre frere le Count qe avowe, qi heir il est, lessa mesmes les tenementz a C. a terme de vie, et puis granta la reversion en fee simple a R. nostre pere, qi heir nous sumes, a tenir du chief seignur;

Avowri. [Fitz. *Avowre*, 120.]

[1] This report of the case is from T., L., and 25184.
[2] T. lui.
[3] T. par.
[4] T. lui.

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hold of the chief lord; wherefore R. made his attendance to the King, who was chief lord, and we, since the death of R. our father, have done homage to the King; thus we are the King's tenant; judgment whether upon us you can avow the distress. —*Stouford.* Put it with certainty whether T. of Lancaster of whom you speak is the same person that we call T. the son of E., or not; for if he be another person, that is nothing to the purpose. —*Parning.* That will come from you; we show that we are the King's tenant; and that ought to suffice for us. — And afterwards *Parning* said that T. of Lancaster and T. the son of E. were one and the same person, and inasmuch as the seignory was extinguished, by T's purchase of the demesne, and he by his grant made our father the King's immediate tenant, judgment &c.—*Pole.* And we also pray judgment, since he had only a fee tail in the services, so that neither by his purchase nor by his demise could he extinguish the entail, particularly when the services were regardant to the manor of which we are seised through the entail &c.—And so to judgment. — And afterwards a Return was adjudged in Hilary term in the 15th year.

Replevin.

(35.) § One J. made his plaint that B. de C. tortiously took his cattle.—*Pole* avowed the taking for the reason that this same J. held of B. a bovate of land by homage, suit, and escuage, and by the services of ten shillings. And of these services we were seised through the hand of this J. as through the hand of our very tenant. And we tell you that Roger formerly husband of B. was seised of the manor of S., whereof the services are parcel, of which services Roger was seised through the hand of J. as through the hand of his very tenant &c. And this Roger gave the same manor to E., chaplain, and the chaplain was seised of these services. And afterwards the chaplain re-enfeoffed R. and B. to them and to the heirs of their two bodies begotten. And R. and B. were seised of these services; and, after the death of Roger, B. was seised, and therefore has answered that she so avows, &c. — *Gayneford.* We tell you that the great-great-grandfather of R. was seised of six bovates of land, of which this particular bovate is parcel, and

par quei R. fist sa attendaunce au Roi qe fust chief seignur, et nous puis la mort R. nostre pere avoms fait homage au Roi; issi sumes le tenant le Roi; jugement si sur nous puissez la destresse avower.—*Stouf.* Mettez en certein le quel T. de Lancastre de qi vous parlez soit mesme la persone qe nous nomoms T. le fitz E. ou noun; qar sil soit autre ceo nest rien a purpos.—*Parn.* Ceo vendra de vous; nous moustroms qe nous sumes tenant le Roi, et ceo nous deit suffire.—Et puis *Parn.* dit qe T. de Lancastre et T. le fitz E. sont une mesme persone. Et de puis qe par le purchas T. del demene la seignurie fust esteint, et il par son grant fist nostre pere tenant immediate du Roi, jugement &c.—*Pole.* Et nous jugement,[1] depuis qil navoit en les services forsqe fee taille, ou par son purchas ne[2] sa demise il ne poait la taille esteindre, et nomement qant les services furent regardants al manoir dont nous sumes seisi par la taille &c.—*Et sic ad judicium.*—[Et puis retourn fut agarde *anno xv.*, *termino Hillarii.*][3] A.D. 1338–9.

(35.)[4] § Un J. fist sa pleinte qe B. de C. atort prist ses avers.—*Pole* avowa la prise par la resoun qe mesme cesty J. tint de B. un bovee de terre par homage, seute, et escuage, et par les services de x. *s.*, des queux services nous feumes seisi par mye la mayn cestuy J. come par mye la meyn nostre verrey tenaunt. Et vous dioms qe Roger jadis baroun B. fut &c. de la manoir de S., de quel les services sount parcel, des queux services Roger fust seisi par mye la mayn J. come par mye la meyn soun verrey tenaunt &c., le quel Roger mesme le manoir dona a E. chapellein, des queux services le chapellein fut seisi, et pus le chapellein reenfeffa R. et B. a eux et a lour heirs de lour ii. corps engendrez, des queux services R. et B. furent seisiz, et, apres la mort Roger B. fut seisi, et pur taunt a respoundu qe si avowe &c. —*Geyn.* Nous vous dioms qe le tresael R. fut seisi de vj. boves de terre de qui cest bove si est parcele, Replegiari.

The words et nous jugement are not in T.

[2] T. en.

The words between brackets are not in T.

[4] From 16560 alone as far as the point at which the larger type ends.

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gave the six bovates of land to one A. to hold of him by such services as you have avowed, which A. enfeoffed you of the one bovate of land. (And he put forward a deed.) Judgment whether you can make avowry for services in excess of those to which that particular portion was liable.—*Pole.* We have avowed as of our own seisin, and that we were ourselves seised through your hand, and that Roger our husband was seised of the services, and the chaplain also; and all this you have not denied, wherefore the law does not put us to answer to what you plead higher up; judgment; and we pray the Return.—SCHARDELOWE. Even though it were as you have said, yet if they were seised of the manor more recently, as she has avowed, she shall avow because of the seisin without answering to anything higher up.—Wherefore *Gayneford* did not dare to abide judgment on the point, and said that he did not attorn to the chaplain.—The other side said the contrary.

Avowry.

§ Avowry for a woman tenant in fee tail, for the reason that the tenant who complained held of her husband, by the services of 10*s.*, a carucate of land, whereof the place &c.; of which services he was seised &c. as of services regardant to a certain manor, of which manor with the appurtenances he enfeoffed a chaplain to whom the plaintiff attorned &c., and afterwards the chaplain gave back the manor to the husband and to his wife who now avows and the heirs of their two bodies issuing, and the husband and she were seised by force of the gift, and afterwards, upon the death of the husband she was seised, and she avowed for certain rent in arrear.—*Gayneford.* We tell you that one A. great-great-grandfather of her husband was seised of six carucates of land, whereof the carucate of land in which the taking was made is parcel, and that he enfeoffed one B. of the six carucates aforesaid to hold of him and his heirs by the services of ten shillings, by this deed &c.; so we are tenant of only a sixth part; and we have often tendered that proportion for that part; judgment whether you can avow the distress for more.—*Pole.* We have commenced the avowry with the seisin of our husband, and then we have shown our own seisin of the whole since his death; wherefore no

et dona les vj. boves de terre a un A. de tenir de luy par autiels services com vous avez avowe, lequel vous enfeffa de la une bovee de terre, et myst avaunt fait; jugement si pur plusours services qe naffert a cel porcion pussez avowerie faire. — *Pole.* Nous avoms avowe de nostre seisine demene et qe nous mesmes feumes seisiz par mye vostre mayn, et Roger nostre baroun fut seisi des services, et auxi le chapellein, quel chose vous navez pas dedit, par quei a pleder plus haut la ley ne nous met mye a respondre; jugement; et prioms retourn.—SCH. Mes qil fut issint com vous avez dit, sil furent seisiz de pune temps en la manoir, come ele ad avowe, ele avowera par cause de la seisine saunz respoundre a plus haut.—Par quei *Geyn.* nosa demorer, et dit qil natorna pas al chapellein.—*Alii e contra.* A.D. 1338–9.

§ Avowerie[1] pur femme tenante en fee taille par la reson qe le tenant qe se pleint tynt par les services de x. souz de son baroun une carue de terre dont le lieu &c.; des queux services il fust seisi &c., come des services regardaunz a un certein manoir, de quel manoir ove les appurtenances il enfeffa un chaplein a qi le pleintif attourna &c., et puis le chaplein redona le manoir au baron et a sa femme qore avowe et les heirs de lour deux corps issauntz, et le baroun et lui seisiz par force del doun, et puis apres[2] la mort le baron ele fust seisi, et pur certein rente arrere ele avowa.—*Gayn.* Nous vous dioms qun A. tresael son baron fust seisi de vj. carues[3] de terre dount la carue de terre en quele la prise se fist est parcel, le quel feffa a tenir de lui et ses heirs un B. de les vj. carues[3] avantditz[4] a tenir par les services de x. *s.*, par ceo fet *&c.*; issi sumes nous tenant forsqe de la vi^e partie, dont nous avoms sovent tendu ceo qe affiert a la porcion; jugement si pur pluis puissez la destresse avower.—*Pole.* Nous avoms comence lavowerie a la seisine nostre baron, et puis[5] avoms moustre nostre seisine demene del entier puis[1] sa mort; par quei a pleder plus haut Avowri.

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[1] This report of the case is from T., L., and 25184.

[2] apres is not in T.

[3] L. acres.

[4] 25184, de terre.

[5] L. and 25184, par.

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law drives us to plead higher than the seisin of our husband.—*Gayneford*, We shall discharge ourselves with regard to you, in the matter of the right, and we shall never have another answer; wherefore &c.

Fine.

(36.) § A husband and his wife acknowledged the tenements contained in the writ to be the right of A. as that which he had of their gift, to have and to hold to him and his heirs for ever &c.; and the husband and the wife and the heirs of the wife warranted &c.

Attachment upon Prohibition.

(37.) § An Attachment upon Prohibition was sued against the party. The defendant answered by attorney made by writ.—*Kelshulle.* The Sheriff has returned *Non est inventus,* wherefore you shall not be received to answer by attorney, or in any other way.—*Gayneford* saw that the plaintiff was ready to count and put forward the letter of Excommunication of the Archbishop of York which proved that he was excommunicated.—*Parning.* We will first count, and then you can say what you please.—SCHARDELOWE. Perhaps there is ground for his suit &c.—*Parning* counted that the party had sued in respect of cloths, linens, and stuffs to the value of 100 shillings in divers counties.—*Gayneford* saw that he could not have any benefit from the letter [of excommunication] and offered to aver that no plea of lay chattels was held contrary to the Prohibition.—And the other side said the contrary.

Formedon.

(38.) § Upon a writ of Formedon, after the view had been demanded, *Pole* prayed that the demandant might count against him.—*Parning.* We counted before the view, and the count was entered upon the roll, wherefore we ought not to count anew.—SCHARDELOWE. If you demur upon that you demur generally.—*Trewith.* I have seen this in a parallel case, and the party was not driven to count.—And afterwards *Kelshulle* defended and prayed leave to imparl.—*Trewith.* We have finally demurred in judgment, wherefore you shall not be received beyond the words of the Court, or to plead any

qa la seisine nostre baron nule ley ne nous chase.—*Gayn.* Nous vous deschargeroms en dreit, et autre respons naveroms jammes; par quei &c. A.D. 1338–9.

(36.)[1] § Le baroun et sa femme coniserent les tenementz contenuz en le bref estre le dreit A. come ceo qil avoit de lour doun a avoir et tenir a luy et a ces heirs a touz jours &c.; et le baroun et la femme et les heirs la femme garrantirent, &c. Finis.

(37.) § Un Attachement sour la Prohibucion fut suy vers la party. Le defendaunt respondi par attourne fait par bref.—*Kels.* Le Vicounte ad respondu *quod non est inventus,* par quei vous ne serrez mye resceu de respondre par attourne *et non aliter.*—*Geyn.* vist le pleintif prest a counter et mist avaunt la lettre le Ercevesqe Deverwyk descomengement qe prova qe il fut escomenge.—*Parn.* Nous voloms primes counter et dounqes poiez vous dire ceo qe vous plest. — SCHD. Par cas est cause de sa sute &c.—*Parn.* counta qe il suyst des draps, lynges, et langes, a la value de C. *s.* en divers countez.—*Gaign.* vist qe il ne poieut benefice de la lettre avoir et tendy daverer qe il ne tient nul plee de lay chatel countre la prohibucion.—*Et alii e contra,* Attachement sour la Pro-[hibicion].

(38.) § En bref de fourme de doun, apres la vewe demande, *Pole* pria qe le demandaunt countast vers luy. —*Parn.* Nous countames devaunt la vewe, et le counte entre en roule, par quei nous ne devoms de novel counter. — SCH. Si vous demorez la vous demorez a tut.—*Trew.* Jeo ay vew en mesme le cas, et il ne fut mye chace de counter.—Et pus *Kels.* defendi et pria conge denparler.—*Trew.* Nous sumes demore en jugement finalement, par quei destre les paroules de la court ou pleder altre plee vous ne serrez mye Fourme de doun.

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[1] This and the subsequent reports of Hilary Term are from 16560 alone.

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other plea. And afterwards he denied the gift; but *Pole* was disavowed in respect of his plea.

Statute Merchant.

(39.) § *Kelshulle* came to the bar and said that one J. was bound by statute merchant to B. Then a deed indented was put forward which he showed to the Court, in which it was expressed that the statute should be null if J. paid to B. certain money on a certain day. And upon that day we tendered the money. And he has sued the certificate now at the Octaves of Saint Hilary. And you have here J. ready with the money at the bar. And we pray that no execution be granted to B. contrary to his deed.—*Herlastone* (the *Clerk*). Execution was granted three days since, wherefore the Court can do nothing more at present.—*Kelshulle.* Then we pray a *Supersedeas* to the Sheriff, and also a writ to the same Sheriff to warn B. to show cause why he sues contrary to his own deed.—SCHARDELOWE. That cannot now be granted you from this place, as it would be if a *Scire facias* were sued upon a recognisance made before us, for in such a case the original would issue out of this Court, but, in this case, the certificate, which is the original of this plea, issues out of the Chancery, wherefore it is necessary to sue [a writ] out of that place, to cause him to come before us to answer wherefore he has sued execution contrary to his own deed, and a *Supersedeas* to the Sheriff to stay execution in the mean time.

Scire facias.

(40.) § *Scire facias* was sued upon a note of a fine in these words:—Whereas a note of a certain fine was levied in the Court of the Lord Edward, our grandfather, formerly King of England, between A. and B. of a tenement in S., to wit that the aforesaid A. acknowledged the tenement aforesaid to be the right of the same B., and granted that the tenement aforesaid which G. and L. his wife held as the dower of the same L., and which after the death of the aforesaid L. was to

resceu. Et pus il dit qe il ne dona pas; mes *Pole* fut desavowe de son plee. A.D. 1338–9.

(39.) § *Kels.* vient a la barre et dit qe un J. fut oblige par statut marchaunt a B. Puis fait endente mys avaunt quel il moustra a la court, qe voleit qe le statut fut anenti si J. paiast a luy certeinz deners a certeine jour, a quel jour nous les tendimes, et il ad suy certificacion ore, a les Utaves de Seint Hillare, et vous avez cy J. prest ov les deners a la barre, et prioms qe nul execucion soit graunte a B. countre soun fet.—*Herlastone, clerk.* Execucion est graunte iij. jours passez, par quei la court ne put plus faire qaunt a ore.—*Kels.* Dounqes prioms un *Supersedeas*[1] a Vicounte et auxi bref a mesme le Viscounte de luy garnir pur quei il suy countre soun fait demene.—SCH. Ceo vous ne pust ore estre graunte hors de ceste place, come il serroit si un *Scire facias* fust suy hors de un reconisaunce fait devaunt nous, qar en tiel cas loriginal issereit hors de ceinz, mes en ceo cas le certificacion qest original de cest plee ist hors de la Chauncellerie, par quei il covent suyre hors de cele place de luy faire venir devaunt nous a respondre pur quey il ad suy execucion countre soun fait demene, et une *Supersedeas*[1] a vicounte de sourseer del execucion en le meen temps. Statut Marchaunt.

(40.) § *Scire facias* fut suy hors dune note en ceste paroule:—Cum nota cujusdam finis levavit in Curia domini Edwardi, avi nostri, quondam Regis Angliæ, inter[2] A. et B. de tenemento in S., scilicet[3] quod prædictus A. recognovit prædictum tenementum esse jus ipsius B., et concessit quod prædictum tenementum quod[4] G. et L. uxor ejus tenuerunt in dotem ipsius L., Scire facias.

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[1] MS. supersedias.

[2] MS. entre.

[3] MS. ten. en s. si, for tenements in S. scilicet.

[4] MS. que.

A.D. 1338-9. revert to the aforesaid A., should remain to the aforesaid B. and his heirs [to be held] of the chief lords of the fee, And now by notification of R. son and heir of the aforesaid B. we are informed that the aforesaid G. and L. are now dead, and that L. and A. his wife now hold the tenement aforesaid, And because we will that those things which have been rightfully determined in the Court of our grandfather aforesaid should be given in charge for due execution, We command you that by honest and lawful men you cause it to be known to the aforesaid L. and A. that they be before our Justices, &c.—*Gayneford.* Every *Scire facias* ought to contain the day, and the term, and the Justices before whom [the fine was levied], and this writ contains none of those things in certain, so that we cannot be instructed with certainty what it is to which we have to answer; judgment of the writ. Again, he first supposes the reversion to be granted to him after the death of the wife, and afterwards in the writ he fixes his term by the death of the husband as well as by the death of the wife, supposing the reversion to be to him after both, which is contrary to the commencement of the writ; judgment of the writ.—*Trewith.* Your plea would be good, if the writ had issued upon a fine, but in this case it has issued upon a note of a fine, in which is never any mention of the day or of the Justices before whom; wherefore if the writ were to contain those particulars it would be at variance with the note.

Laurence and Alice his wife tell you (by *Gayneford*) as tenants of forty acres of land, that one A. de S. granted to W. Hail, uncle of Alice, one of whose heirs she is, the reversion of fourscore acres of land, whereof these forty acres of land are parcel, after the death of R. de T. (who held them, of his lease, for term of life) to this same W. for ever; and we tell you that from W. uncle of our wife the right to those tenements (after the death of R. tenant for term of life) because he died without heir

et quod[1] post mortem prædictæ L. prædicto A. debuerit reverti, remaneret prædicto B. et heredibus suis de capitalibus dominis feodi, Ac jam ex insinuatione R. filii et heredis prædicti B. accepimus quod prædictus G. et L. jam defuncti sunt, et L. et A. uxor ejus tenementum prædictum modo tenent, Et quia volumus ea[2] quæ in curia prædicti avi nostri rite acta sunt debitæ executioni demandari, tibi præcipimus quod per probos et legales homines scire facias prædictis[3] L. et A. quod sint coram Justiciariis nostris &c.—*Geyn.* Chequne *Scire facias* deit comprenere jour, et terme, et devaunt queux Justices, et cestuy bref ne comprent rien en certeyn, issint qe nous ne poms estre instruites en certein a quei respondre; jugement de bref. *Iterum*, primes il suppose la reversion estre graunte a luy apres la mort la femme, et apres en le bref il determine auxi bien la mort le baroun com la mort la femme, supposant la reversion a luy apres ambedeux, qest contrare al comencement de bref; jugement de bref.—*Trew.* Vous deissez bien sil fut issi hors dune fyn mes en ceo cas il est issu hors dune note, et ne voet jammes certein jour ne devaunt queux Justices; par quei si le bref le deit comprenere il serreit variaunt a la note.

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Laurence et Alice sa femme vous dient par *Gaign.* come tenauntz de xl. acres de terre qun A. de S. graunta a W. Hail, unkle Alice, qi un des heirs ele est, la reversion de iiij^{xx} acres de terre, dount ceux xl. acres de terre sount parcel, apres la mort R. de T. qe ceux tient a terme de sa vie de soun lees, a mesme celuy W. a touz jours; et vous dioms qe de W. uncle nostre femme[4] le dreit de ceux tenementz, apres la mort R. tenaunt a terme de vie, pur ceo qe il devia

[1] MS. que.
[2] MS. quod ea.
[3] MS. predicte.
[4] MS. vostre.

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of his body, descended to John as brother and heir, and from J. to this Alice and Isabel, who is named in this writ with F. her husband, as to daughters and heir; and we tell you that, after the death of R. we entered upon the entirety with F. and Isabele and made partition, so those tenements, for the acknowledgment in respect of which we now undertake to answer, and the tenancy thereof were allotted to us in the name of purparty in allowance for other tenements allotted to the purparty of F. and Isabel, without whom &c. And they prayed aid &c. And, in the same manner, F. and Isabel prayed aid of Laurence and Alice his wife.—*Trewith.* Aid-prayer of a parcener is in lieu of voucher, and voucher is taken away by Statute[1] in *Scire facias.*—*Parning.* Also we pray that he state with certainty whether the reversion, upon which this aid-prayer is founded, was granted before the fine or after; for, if after, it was worthless, for he had previously granted to us, &c., and not otherwise.—*Trewith.* Whereas you pray in aid, &c., on the ground that the reversion was granted to W. your uncle, that W. never had anything, wherefore we do not understand that you ought to have aid.—*Stouford.* To this action we cannot be party without the parcener. —SCHARDELOWE. The ground of your aid-prayer here is that the reversion was granted to W. your uncle; and that he has destroyed, &c.

Writ of Debt.

(41.) § A writ of debt was brought against Alice executrix of one J. — *Kelshulle* counted that he [the deceased] was bound to him [the plaintiff] in ten pounds, and that she had administration as executrix.—*Power.* He brings this writ against Alice as against the executrix of J., and to that we say that she is not executrix; ready &c.—*Kelshulle.* That is not an issue, since you do not deny the administration; wherefore, &c.—*Power.* We have traversed that which you suppose by your writ.—SCHARDELOWE. Even though she were not exe-

[1] 13 Ed. I. (Westm. 2) c. 45.

saunz heire de soun corps, descendi a Johan come a frere et heire; de J. a ceste Alice et Isabele qest nome en cest bref ov F. soun baroun com a filles et heire; et vous dioms qe apres la mort R. nous entrames en lentier ovesqe F. et Isabele et feismes la purpartie, issint ceux tenementz dount enpernoms la conisaunce ore et la tenaunce nous fut allote en noun de purpartie en allowaunce des altres tenementz allotez a la purpartie F. et Isabele, saunz qi &c. Et prient eyde &c. Et en mesme la manere F. et Isabele prierent eyde de Laurence et Alice sa femme.—*Trew.* Eyde prier de parcener est en lieu de voucher, et voucher est ouste par statut en *Scire facias.*—*Parn.* Auxi nous prioms qe il mette en certeyn le quel la reversion fust graunte qest cause de ceste eyde prier devaunt la fyn ou puis, qar sil fut pus il ne fut pas de value, qar il avoit graunte devaunt a nous, &c., *et non aliter.*—*Trew.* La ou vous priez en eyde, &c., par taunt qe la reversion fut graunte a W. vostre uncle, celui W. navoit unqs rien par quei nentendoms mye qe vous devez eyde avoir.—*Stouf.* A ceo ne poms estre partie saunz qe parcener. — SCH. La cause de vostre prier eide si est par taunt qe la reversion fut graunte a W. vostre uncle, et ceo ad il destruit, &c.

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(41.) § Bref de dette[1] fust porte vers Alice executrice un J.—*Kels.* counta coment il fut tenuz a luy en x. livres et qe cest avoit administracion come executrice.—*Power.* Il porte cest bref vers Alice come vers executrice J., et la dioms nous qel nest pas executrice; prest &c.—*Kels.* Ceo nest pas issue del houre qe vous ne deditez pas ladministracion; par quei &c. —*Power.* Nous avoms traverse ceo qe vous supposez par vostre bref.—SCH. Mesqe ele ne fut pas executrice,

Bref de Dette.

[1] MS. dreit.

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cutrix, if she had administration, the writ would be maintained against her as against an executrix; wherefore plead something else, if you will, &c.

Debt.

(42.) § A writ of Debt was brought against one J. The Sheriff returned that he was a clerk and had no lay fee &c.; wherefore a writ issued to the [Arch]bishop of C. to cause his clerk to come &c. An *alias* writ followed. To the *pluries* writ he made his return too late.—*Pole.* We pray a writ to attach the Bishop.—And he had it.

Trespass.

(43.) § A writ of Trespass was brought against several persons in the King's Bench, and they pleaded Not Guilty. Process was continued against the Inquest until now, in fifteen days of Saint Hilary when the Inquest was ready to pass &c. — *Casse* (for one of the defendants). Since the last continuance you have taken a husband and so have abated your writ. —*Thorpe.* What say the others ?—*Casse.* We plead for R. — *Thorpe.* Then we pray the Inquest against the others.—*Casse.* The Inquest cannot be severed.—*Thorpe.* That is true; and if the Inquest passed between us and the others who are at the bar, process could never be made further against the Inquest, because it would be in vain; for, if the Inquest passed against you in respect of this coverture which you now allege, I should recover damages against you and upon this verdict, wherefore Inquest can never afterwards be taken as to whether you are guilty.—WILLOUGHBY caused the Inquest to be called which was ready at the bar; and they were sworn, and they said that the others were Guilty. Wherefore it was adjudged that the plaintiff should recover his damages, but that execution should be stayed until enquiry had been made respecting the coverture.

(44.) § In a plea of land the tenant sued against his warrantor. Afterwards an *alias* and a *pluries* writ

si ele lavoit ladministracion, le bref serra meintenu vers luy come devers executrice, par quei ditez altre chose si vous voillez, &c. A.D. 1338–9.

(42.) § Bref de dette fut porte vers un J. Le Vicounte retourna *quod fuit clericus et non habet laicum feodum* &c.; par quei bref issit al Evesqe de C. qil feist venir soun clerk &c. *Sicut alias.* Al *sicut pluries* il retourna le bref tarde. — *Pole.* Nous prioms bref datacher Levesqe.—*Et habuit.* Dette.

(43.) § Bref de trespas fut porte vers plusours en Baunk le Roy qe plederent de rien coupables. Proces continue vers Lenqueste taunt qe ore a la xv. de Seint Hillare qe lenqueste fut prest a passer &c. — *Casse,* pur un, Pus la dreyn continuaunce vous avez pris baroun, issint avez abatu vostre bref. — *Thorpe.* Qe dient les autres ? — *Casse.* Nous pledoms pur R. — *Thorpe.* Dounqe prioms lenqueste vers les altres. — *Casse.* Homme ne put severer lenqueste.—*Thorpe.* Cest verite; et, si lenqueste passast entre nous et les autres qe sount a la barre, jammes fra homme proces outre vers lenqueste, pur ceo qe ceo serreit en veyn; qar, si lenqueste passa countre vous de cest coverture qe vous ore alleggez, jeo recovereie damages vers vous et sour cel verdit, par quei homme ne put mye apres prendre enqueste si vous soiez coupable. — WILBY fit a demander lenqueste qe fut prest a la barre; et feurent sermentez et disoient qe les altres furent coupables. Par quei feut agarde qe le pleintif recoverist ses damages, mes qe execucion cessast taunqe enquis fut de la coverture. Trespas.

(44.) § En plee de terre le tenaunt suy vers son garrant. Pus le *sicut alias* et le *sicut pluries,* par

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issued, wherefore it was said that he should sue at his peril. When the *Sequatur suo periculo* was returnable now, in this term, no writ was returned. The demandant prayed seisin of the land, and the tenant was essoined.

Appeal.

(45.) § A woman sued an appeal against three persons for the death of her husband, and counted as of force and aid against one who appeared.—*Casse* prayed oyer of the appeal and of the record of the same appeal in the County Court, which was read in the following words:—The County Court of Derby held on Thursday next after the Feast of Saint Thomas in the ninth year of the reign of King Edward. At this County Court Alice who was the wife of Richard Wynter appealed A.B., and C., and A. of the death of the aforesaid Walter feloniously killed; and she found as pledges to prosecute R., and F. Wherefore the Coroners of the same County gave precept to the Sheriff to take their bodies and cause them to be kept in safe custody, so that he should have their bodies at the County Court next following. At which County Court the Sheriff a second time testifies that they are not found. Wherefore it was considered, as often before, that he should take their bodies so that he should have their bodies at the County Court then next following. At that County Court the Exigent was awarded because the Sheriff answered as before that the appellees were not found. And afterwards a writ came to the Sheriff, at the suit of the appellant, to send the appeal, with the matters in support of it, and everything touching the appeal, before the King, which writ is now, this term, returned.—*Casse.* Every appeal must have been before the Coroner, must it not? And the King wills that the appeal come hither, wherefore we pray a writ to the Coroners that they send it.—WILLOUGHBY. But also, inasmuch as it was laid before the Coroners, we hold it to be placed before the Sheriff, for he shall hold plea of

quei dit fut qe il suyst a son peril. Al *Sequatur suo periculo*[1] retournable ore a ceste terme nul bref est retourne. Le demandaunt pria seisine de terre, et le tenaunt fut essone. A.D. 1338–9.

(45.) § Une femme suy un appele vers iij. persones de la mort soun baroun, et counta vers un qe vient de la force et del eyde.—*Casse* demanda oy del appel et del recorde de mesme lappel en counte qe feut lieu en tiels paroles :—Comitatus Derbiensis tentus die Jovis proxima post festum Sancti Thomæ anno regni Regis Edwardi nono. Ad hunc Comitatum Alicia quæ fuit uxor Ricardi[2] Wynter appellavit A.B. et C. et A. de morte prædicti Walteri[2] felonice interfecti; et invenit plegios de prosequendo R. et F. Per quod Coronatores ejusdem Comitatus præceperunt Vicecomiti quod caperet corpora eorum et salve custodiri faceret ita quod haberet corpora eorum ad proximum Comitatum sequentem. Ad quem Comitatum Vicecomes iterato testatur quod non sunt inventi; per quod consideratum fuit sicut pluries quod caperet corpora eorum ita quod haberet corpora eorum ad proximum Comitatum tunc proxime sequentem,[3] — a quel Lexigende fut agarde pur ceo qe le Vicounte respondy *sicut prius* qe les appellez ne furent mye trovez. Et pus bref vient a la suyte de lappellante[4] al Vicounte damaunder lappel *cum adminiculis et omnibus appellum tangentibus* devaunt le Roy ore cest terme retourne.—*Casse.* Chesqune appel ne fut devaunt le Coroner, et le Roy veut qe lappel viegne, par quei nous prioms bref as Coroners qe ils le maundent. —Wilby. Auxi entaunt come il feut fourme devaunt Coroners nous le tenoms estre mys devaunt Vicounte Appel.

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[1] In the MS. "Al *Sequatur suo* "*periculo*" appears as the marginal description of the case, and not in the text.

[2] *Sic* in MS.

[3] MS. sequens.

[4] MS. lappelle; but this is inconsistent with the context.

A.D. 1338–9.

the appeal, and not the Coroner; and if he had not the appeal he would not have warrant to hold the plea; wherefore, according to the return which he has now made, we understand the appeal and all things touching it to be fully returned before us. — *Casse.* You will find an Exigent awarded against us on the day on which the *Pluries Capias* was returnable; and this was contrary to law, for they ought to have continued to award the *Capias* on each occasion. So it is upon such a record as this that the matter comes into this Court at your own suit. — WILLOUGHBY. Can we reverse the Sheriff's record when you did not lose any thing by that award, for you were not then outlawed? However, he shall be amerced; and so he was to pay one mark. — *Casse.* We are appealed as accessory to the fact, wherefore we cannot answer until those who are appealed as principals are convicted. Wherefore, having regard to the others, he found mainprise.—*Thorpe* prayed the *Capias.*—WILLOUGHBY. Why do you pray the *Capias,* when the Exigent is given you? But because he might at another time say, "Sir, this delay affects us only and "is to our damage only, and is in nothing prejudicial "to the defendants," the *Capias* was granted. Nevertheless, the cause of the judgment was that he prayed the *Capias* because he wished to commence his process rather than to continue by means of the Exigent the process which was erroneously commenced before the Sheriff.

Exigent.

(46.) § The return made to an Exigent by the Sheriff was that the defendant had been taken by his predecessor Sheriff of the same County, by virtue of the same writ, and still remained in the custody of the latter, and had not been delivered to the existing Sheriff. Wherefore a Distress was awarded to distrain his predecessor to deliver the body &c.

Dower.

(47.) § A woman brought a writ of Dower against J. —*Gayneford* made the demand for the third part of ten

qar il tendra plee del appel, et ne mye le Coroner; et sil nust lappel il navereit pas garrant de la plee tener; par quei, solom le retourn qe il ad ore fait, nous entendoms lappel et quaunqe le touchent estre pleinement devaunt nous retourne. — *Casse.* Vous troverez un Exigende agarde devers nous al *Capias sicut pluries* retournable, quel chose fut encountre liey, qar il dusent tut temps aver agarde la *Capias.* Par quei sour tiel recorde veint seinz a vostre suyte demene. — WILBY. Poms nous reverser le recorde le Vicounte pus qe vous ne perdistes rien par cel agarde, qar vous ne feustes mye utlage adounqes? Mes il serra amercie; et sic fut a donner j. marke. — *Casse.* Nous sumes appellez de fet accessorie, par quei nous ne poms respondre taunqe ceux qe sount appellez del principal soient atteintz. Par quei il trova meynprise en dreit des autres.—*Thorpe* pria le *Capias.*—WILBY. Pur quei priez vous le *Capias,* qar vous doune Lexigende? Mes pur ceo qe il purra autrefoithe dire—Sire, ceo nest forqe nostre delay et nostre damage et rien prejudicial a la defendaunts—le *Capias* fut graunte. *Tamen causa judicii* fut qil luy pria purceo qe il voleit meuth comencer son processe qe continuer par Lexigende le proces qe erroynement fut comence devaunt le Vicounte. A.D. 1338–9.

(46.) § Un Exigende fut retourne par le Vicounte qe le defendaunt fut pris par vertue de mesme le bref par soun predecessour Vicounte de mesme le Counte, et unquore demoert en sa garde, nest livere a celuy quore est Vicounte. Par quei fut agarde un destresse a destreindre soun predecessour qil ly liverast le corps &c. Exigas.

(47.) § Une femme porta bref de dowere vers J.— *Gaign.* fit la demande de la terce partie de x. mes, Dowere.

A.D. 1338–9.

messuages, ten bovates of land, and ten acres of pasture in S., B., and C.—*Trewith.* You cannot demand dower, for a fine was levied between one R. (the woman's husband) and one Isabel his wife, plaintiffs, and one B. deforciant, whereby R. and Isabel acknowledged the tenements contained in the writ to be the right of B. &c.; for which acknowledgment B. granted and rendered to R. and Isabel in fee tail. We are the heir begotten of their bodies; judgment whether you who are the second wife can have an action. And he said that the subject of her demand was only one messuage and one bovate of land, and that only in S. and B.—*Gayneford.* We have said that our demand is as above, and he says that it is only one messuage and one bovate of land, wherefore as to the rest, since he makes no answer, we pray seisin; and as to anything else not comprised.—BASSET. Whereas you demand so much, that is only so much, wherefore he has no need to answer to any thing else.—*Gayneford.* Our husband was seised of so much as we demand; ready &c.—BASSET. You shall not have the averment &c.—*Mallum* (the Clerk) said to *Gayneford,* If your demand be as you have made it you will recover, so that you are not put to any injustice.—*Trewith.* He has said that a part is not comprised; therefore it is to be taken as not denied that the rest is comprised; wherefore you shall not now be received to say that her demand is not comprised.—And afterwards he said, Not comprised &c.—And the other side said the contrary.

Feme received.

(48.) § A writ was brought against a husband and his wife. The husband made default; the wife prayed to be received to defend her right; and she was received and vouched to warranty. Process was continued against the vouchee as far as the *Sequatur suo periculo,* and the wife made default. There came one J. and said that the wife held for term of life, the reversion

x. boves de terre et x. acres de pasture en S., B., et C. — *Trew.* Vous ne poiez dower demander, qar un fyn se leva entre un R. baroun la femme et un Isabele sa femme pleignants et un B. deforciant, ou R. et Isabele coniserent les tenementz countenuz en le bref estre le dreit B., &c.; pur quele conisaunce B. graunta et rendy a R. et Isabele en fee taille. Nous sumes heir engendre de lour corps; jugement si vous poiez accion aver, qestes la seconde femme. Et dit qe sa demande ne fut mes j. mes et un bovee de terre et ceo ne fut mes en S. et en B.—*Geign.* Nous avoms dit qe nostre demande si est *ut supra,* et il dit qe ceo nest qe j. mes et j. bovee de terre, par quei qaunt al remenant, del hour qil ne respount rien nous prioms seisine, et qaunt al remenant nient compris.—Bass. La ou vous demandez taunt, ceo nest qe taunt, par quei a altre il nad mestere a respondre.—*Geyn.* Nostre baroun fut seisi de taunt come nous demandoms; prest, &c. — Bass. Vous naverez mye laverement &c.—*Mallum,* clerk, dit a *Geyn.,* Si vostre demande soit com vous avez fait vous recoverez issint qe vous nestes a nul meschef. — *Trew.* Il ad dit qe partie nest pas compris, issint est tenuz a nient dedit qe le remenant si est compris; par quei ore a dire qe sa demande nest pas compris vous ne serrez pas resceu &c.—Et pus il dit nient compris &c.— *Et alii e contra.*

A.D. 1338–9.

(48.) § Bref fut porte vers le baroun et sa femme. Le baroun fist defaute; la femme pria destre resceu a defendre soun dreit; et fut resceu, et voucha a garrant. Proces continue vers le vouche taunqe al *Sequatur suo periculo,* et la femme fist defaute. Vint un J. et dit qe la femme tient a terme de vie, la re-

Feme resceu.

A.D. 1338–9.

regardant to himself by reason of his own lease, and prayed to be received to defend his own right.

Aid granted.

(49.) § Henry Hercley brought a writ of Formedon in the remainder against Hugh de Louthre, in respect of a manor.—*Parning.* The King, the father of the King that now is, gave the manor (excepting so much land) to Hugh de Louthre for term of his life by this charter which is here; and we tell you that the King gave what was excepted to T. de Rokeby, who is this day tenant of what was excepted; judgment of the writ.—*Stouford.* Fully tenant in demesne as in service, &c. on the day of the purchase of the writ.—*Parning.* By the King's charter, which is of record, it is proved that what is excepted is parcel of the manor, so that by my plea I put you to answer simply whether T. is tenant of what is parcel or not; for if you had the general averment, perhaps you would and could have the answer that this which has been excepted is not parcel, which would be contrary to the King's charter; and that is not permissible.—*Stouford.* I have not to plead in respect of any tenancy except yours, nor have I anything to do with the King's charter, and I will certainly aver as above, which averment you refuse &c.—*Parning.* Show what interest you have in the remainder.—And he showed.—*Parning.* The King gave us the manor (as above) for term of life, and afterwards granted the reversion to T. de R., which T. granted the reversion to Sir Ralph de Neville, and upon that grant we attorned,

version regardant a luy par cause de lees demene, et pria destre resceu a defendre soun dreit. A.D. 1338–9.

(49.) § Henri Hercley porta bref de fourme de doun en le remeindre vers Hugh[1] de Louthre dun manoir.— *Par.* Le Roy piere le Roy qore est dona le manoir, forpris taunt de terre, a Hugh de Louthre[2] a terme de sa vie par ceste chartre qe cy est; et vous dioms qe le Roy dona la forprise a T. de Rokeby qest huy ceo jour tenaunt de la forprise; jugement de bref.—*Stouf.* pleinement tenant en demene come[3] en services &c. jour de bref purchace. — *Parning.* Par la chartre le Roy qe est de recorde est ceo prove qe le forprise est parcel del manoir issint qe jeo vous mette soulement par ma excepcion de respondre si T. soit tenant de parcele ou noun, qar si vous ussez laverement general vous voudriez et puissies par cas aver respons qe cele forprise nest pas parcele, qe serreit acontrarie de la chartre le Roy qe nest pas soeffrable. — *Stouf.* Jeo nai a pleder anully tenaunce forqe a la vostre, ne jeo nay qe faire de la chartre le Roy, par eio[4] voille averrer *ut supra,* quele averement vous refusez &c.— *Parn.* Moustrez ceo qe vous avez del remeindre.—Et il moustra. — *Parn.* Le Roy nous dona le manoir, *ut supra,* a terme de vie, et pus graunta la reversion a T. de R., le quel T. graunta la reversion a Sire Rauf de Neville par quel graunte nous attournames, et Eide grante.

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[1] MS. luy. Hugh is substituted on the authority of the Patent Roll, 12 Ed. III., Part 1., m. 7, on which is enrolled the grant of the reversion of the manor of Harkla (expectant on the death of Hugh de Louthre, to whom the manor had been granted for life by Edward II.) to Thomas de Rokeby. The MS. is somewhat corrupt in this and other parts of the report.

[2] MS. a J. Vacherie a A., instead of a Hugh de Louthre.

[3] The words en demene are repeated after come in the MS.

[4] Though there is some authority for the use of "par" as an intensive, and though "eio" may be correct, it is probable that the reading should be "par quei jeo voille," the scribe having omitted the word "quei."

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and we pray aid of R.—*Pole.* R. had nothing in the reversion on the day of the purchase of the writ.—*Parning.* You do not deny our tenancy for term of life—the reversion to R.; wherefore we pray aid.—*Stouford.* Since you do not deny that he had nothing in the reversion on the day of the purchase of the writ, and a conveyance made while a writ is pending shall not, according to law, put a demandant to delay, therefore, &c.—SHARDELOWE. Though a reversion were granted while a writ is pending against tenant for term of life, if the grant were by fine, the tenant would be put to attorn, and the demandant is not more delayed by the aid-prayer when aid is prayed of the grantee than when it is prayed of the grantor.—*Stouford.* He is so; the grantee could vouch the grantor, and that would be a cause of delay.—SCHARDELOWE. He would fail in his voucher.—And they were adjourned.—Afterwards the aid was granted by judgment, &c. in Michaelmas Term next following.

Per quæ Servitia.

(50.) § A man and his wife purchased to them and the heirs of their two bodies issuing &c., the remainder to the heirs of the husband; and their services were granted by fine, here, to H. the son of H. They came into Court and were driven to state with certainty the manner of the tenure of the parcel they claimed, and the quantity. And he said how much he held by homage, fealty, and escuage (that is to say when the escuage amounted to forty shillings, so much), and by so much rent, and that he held the rest by suit and so much rent for all services. And it was asked of H. whether he would accept the claim. He said he would. Wherefore they did homage in this manner:—The husband alone held his hands joined between the hands of H. and was charged by BASSET in these words: "I become your "man from this day forward for the frank tenement "which I hold of you, and will bear faith unto you "against all people, saving the faith that I owe unto "our Lord the King and his heirs, &c., and my other

prioms eyde de R.—*Pole.* R. navoit rien en la reversion jour de bref purchace.—*Parn.* Vous ne deditez nostre tenaunce a terme de vie, la reversion a R., par quei nous prioms eyde.—*Stouf.* De pus qe vous ne deditez pas qe il avoit rien en [la reversion] le jour de bref purchace, et demise pendaunt le bref ne mettra pas par ley le demandant a nul delay, par quei, &c.—SCH. Coment qe reversion soit graunte pendaunt bref vers tenant a terme de vie, si ceo fust par fyn le tenant serreit mys dattourner, et le demandant nest plus delaye par leie priere graunte qe del grantour.—*Stouf.* Si est; le graunte put voucher soun grantour, et ceo cherreit en deley. SCH. Il faudra del voucher. *Et adjornantur.*—Puis leide fut graunte par agarde, &c., *Termino Michaelis proxime sequenti.*

A.D. 1338–9.

(50.) § Un homme et sa femme purchacerent a eux et as heires de lour ij. corps issauntz &c., le remeindre as heirs le baroun, et lour services par fyn si furent grauntez a H. le fitz H. Ils vindrent en Court et furent chacez de clamer en certein le manere la quantite de lour tenaunce fut parcele. Et dit combien il tient par homage, fealte, et escuage, saver qaunt lesqeu court a xl. s. taunt, et par taunt de rente, et le remenaunt par seute et taunt de rente pur touz services. Et fut demande de H. sil voleit accepter le clamer. Il dit qoyl. Par quey il firent homage en cest manere:—Le baroun tient soulement ses maynz jointz entre les maynz H. et fust charge par BASS.:—"Jeo deveigne vostre homme de cest jour en " avaunt del frank tenement qe jeo tiegne de vous, " et foy vous porray countre totez gentez, sauve le " foy qe jeo dey a nostre seignour le Roy et ses

Per quæ Servitia.

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"dues of lordship." And he first and afterwards his wife kissed. Henry gave one mark to the criers, and then they did suit:—"From henceforth we will be in-"tendant to you (the wife as A.'s wife) and will lawfully "acknowledge and perform the services due, so help us "God, &c." And they both held their hands within the book, and kissed, and the husband spoke the words, &c.

Debt.

(51.) Debt against H. de Belton and others executors. And the plaintiff counted of their testator's contract in York within the liberty of the Minster of Saint Peter. The bailiff of the City demanded the franchise. The bailiff of Saint Peter's also demanded the franchise, and neither one nor the other made his claim with certainty. It was asked of the attorney for the defendants whether he wished to say anything; and he defended, and went out to imparl, and came back. And the bailiff of St. Peter's demanded the franchise anew; and it was not allowed because the party had defended, and so this Court was already in possession of the plea on the day of the purchase of the writ.—*Stouford.* On the day of the purchase of the writ *plene administraverunt;* ready &c.—*Pole.* You had assets &c. in your hands in the County of Norfolk on the day of the purchase of the writ; ready &c.—And *Stouford* was put to answer to this, and he traversed it.—And the Inquest shall come from the County of Norfolk, &c.

Fine.

(52.) § Two wives and their husbands rendered certain tenements by fine, and granted the reversion also, and bound themselves and the heirs of the wives to warranty; and this fine was accepted upon the warranty of the heirs of the wives, because the inheritance was that of the wives descending in coparcenary, so that the heirs would be able to warrant the moieties severally. It would have been otherwise had there been a joint purchase. Nothing, however, was said upon that subject, but upon examination it was found that the inheritance was theirs.

" heires, &c., et mes autres seignourages." Et il primes et pus sa femme beiserount. Henry dona i. marke a criours et pus firent seute :—Desormes serroms entendant a vous come femme a A. et lealment conustroms et froms les services duez si Dieu nous eide, &c. Et lun et lautre tiendrent lour meyns entre le livere et baiserent le, et le baroun dit les paroles &c. A.D. 1338–9.

(51.) § Dette vers H. de Belton et autres executours. Et counta de contract lour testatour en Everwyk deinz la Moustere de Seint Pere. Le baillif de la Cite demanda la franchise. Le baillif de Seint Pere demanda la franchise, et ne clamerent pas ne lun ne lautre en certein. Demande fut del attourne les defendauntz sil voleit rien dire; et il defendi et issit denparler, et revent. Et le baillif de Seint Piere de rechef demanda la franchise, et ne fut pas alowe pur ceo qe la partie avoit defendu, et issi cest Court seisi del plee ja al jour de bref purchace.—*Stouf.* Al jour de bref purchace pleynement administre; prest &c.—*Pole.* Vous avez assez &c. entre meyns en le Counte de Norfolk, prest &c., jour de bref purchace. — A quey *Stouf.* fut mys de respondre, et traversa.—Et lenquest vendra del Counte de Norfolk, &c. Dette.

(52.) § Deus femmes et lour barouns rendent certeinz tenementz par fyn et graunterount la reversion auxi, et obligerent eux et les heires les femmes a la garaunti; et cest fyn fut accepte sour la garranti les heires les femmes pur ceo qe ceo fut leritage le femmes descendant en parcenerie, issint qe les heires severalment purrount garrantir les moytes. *Secus fuisset* sil ust este joint purchace. *Tamen* rien ne fut parle a cest matere, mes sour lexaminement trove fut qe ceo fut lour heritage. Fyn.

EASTER TERM

IN THE

THIRTEENTH YEAR OF THE REIGN OF

KING EDWARD THE THIRD

AFTER THE CONQUEST.

EASTER TERM IN THE THIRTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

A.D. 1339. (1.) § J. de K. granted to Robert de Koleville by fine the reversion of a carucate of land which W. de C. and Margery his wife held for term of the life of Margery, &c. The two latter came into Court, and as to a moiety they claimed the fee, and as to the reversion said that J. de K. granted a lease of the same land to Margery wife of W. de C., for term of life, and afterwards, by another deed, granted that the wife might commit waste without being impeached of waste; and she said that she would willingly attorn if Robert de Colville would acknowledge the deed and if the deed were entered. — SCHARDELOWE. You came on the first day (for there has been no process made) and you have claimed for term of life according to the words of the grant; wherefore attorn if you will, for the deed shall not be entered nor the claim of fee.—*Stouford.* In case of an acquittal of services one shall not be driven to attorn without an acknowledgment of the acquittal; no more here.—SCHARDELOWE. The case is not similar, for in this case she could have a writ of Covenant. —BASSET. If she had come upon process she might have had the advantage of the deed. — And afterwards she attorned.

Note. § Note that a fine was levied of a manor whereof parcel which was in reversion after the death of a tenant for term of life was granted. And on the same day that the fine was levied a man

DE TERMINO PASCHÆ ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU TERTIO-DECIMO.[1]

(1.)[2] § J. de K. graunta la reversion dune carue de terre a Robert de Koleville par fyn le quel W. de C. et Margerie sa femme tiendrent a terme de la vie Margerie &c. Il viendrent en Court, et qaunt a la moite il clamerent fee, et qaunt al reversion J. de K. graunta qil lessa mesme la terre a Margerie la femme W. de C. a terme de vie, et pus par un autre fet il graunta qe la femme purreit faire wast saunz estre enpeche de wast; et dit qele voleit volunters attourner si Robert de Colville voudra conustre le fait et qe le fet fut entre. — SCHRD. Vous estes venu le primer jour, qar il nad nul proces fait, et vous avez clame a terme da vie com le graunt voet; par quei attournez si vous volez qar le fet ne serra mye entre ne le clamer de fee. — *Stouf.* En cas[3] dacquitaunce il ne serra mye chace dattourner saunz conustre lacquitaunce; nul plus icy. — SCHRD. Il nest mye semblable qar en ceo cas il put aver bref de covenaunt. — BASS. Sil venist par proces il avereit avauntage del fet. Et pus ele attourna. A.D. 1339.

§ Nota[4] qe fyne fust leve dun manoir dount parcel qe fust en reversion apres le decees un tenant a terme de vie fust grante. Et[5] mesme le jour qe la fyne se leva un homme et Nota. [Fitz. *Fynes*, 65.]

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[1] The reports of this term are from the Temple MS., the Lincoln's Inn MS., and the Additional MSS. in the British Museum numbered respectively 16560 and 25184.

[2] From 16560 alone as far as the point at which the larger type ends.

[3] MS. ceo.

[4] This report of the case is from T., L., and 25184.

[5] T. a.

A.D. 1339. and his wife, who held for term of life, in right of the wife, came and said, as to parcel, that the wife had a fee simple by release of the cognisor; and the cognisee could not deny it; wherefore an exception of that parcel was made in the note; and as to another parcel she showed that she might commit waste, and that by the deed of the cognisor; and, saving to themselves the advantage of the deed, they were ready to attorn.—SCHARDELOWE. As it seems to me, no mention shall now be made of that deed; for, if you be impeached of waste by the cognisee, you will recover damages against the cognisor or his heirs by writ of Covenant.—And afterwards the attornment was made without mention of the deed; but it was made *gratis* and not by judgment. Therefore *Quære.*

Account. (2.) § Account, for a receipt in the 11th year. And, because the defendant was now adjudged to be under age, the plaintiff, by judgment, took nothing.

Debt. (3.) § William de Clare brought a writ of Debt against J. de C.—*Trewith* counted how Piers de C., father of J., was bound to J. de Clare the father of W. and to his heirs in the sum of 10*l.*, &c, and his writ made no mention of heirs either on the one part or on the other.—*Gayneford.* You see how he has supposed by his count that this obligation was made to his father, and he does not make himself heir to his father by the writ; judgment of the writ.—And it was expressed in the specialty that the obligation was made to J. de Clare and to his heirs or executors, and the words in the writ were *debet et injuste detinet.* —*Trewith.* If I were to bring a writ of Right upon the seisin of my ancestor, I ought never to make myself heir in my writ, but in my count, and now also it is sufficient in this case.—*Kelshulle.* If the executors had been trying to recover, unless they had mentioned in their writ that they were executors, the writ would be worthless; nor is it worth more in this case in which he demands, as heir, upon an obligation made to his father.—SCHARDELOWE. The case is not similar, for executors do not demand as in respect of what is

sa femme, qe tyndrent a terme de vie de dreit[1] la femme, vyndrent et disoient qant a parcelle qe la femme avoit fee simple pur relees le conisour, et le conise [ne lui poet dedire; par quei de cele parcele forpris fust fait en la note; et qant a autre parcelle ele moustra qe][2] le poait wast faire, et ceo par le fait le conisour; et, sauf[3] a eux lavantage del fet, prest furent dattourner.—Schd. Homme a ceo qe moy[4] semble ne fra pas ore mencion de cel fait; qar si vous soiez enpeche de wast par le conisee, vous recoverez damages vers le conisour ou ses heirs par bref de covenant.—Et puis lattournement fust fait sanz faire mencion du fait, *sed gratis et non per judicium. Quære ergo.* A.D. 1339.

(2.)[5] § Acompt de resceite lan xj. Et purceqe le defendant feust ore ajugge deinz age, le pleintif prist riens, par agard. Acounte. [Fitz. *Enfant*, 9.]

(3.)[6] § William de Clare porta bref de dette vers J. de C.—*Trew.* conta coment Peres de C. pere J. fut oblige a J. de Clare pere W. et a ses heirs en x. livres &c., et soun bref ne fist mencion de heir dun part ne dautre. — *Geign.* Vous veiez coment il ad suppose par counte qe cest obligacion fut fet a soun pere et il ne se fet pas heir a soun pere par bref; jugement de bref.—Et lespecialte voleit qe obligacion se fit a J. de Clare et a ses heirs *seu executoribus*, et le bref voleit *debet et injuste detinet.* — *Trew.* Si jeo fuse a porter un bref de dreit de la seisine mon auncestre, jammes ne me dey jeo faire heir en moun bref, mes en moun counte, et ore suffit auxi icy. — *Kels.* Si les executours ussent este a lour recoverir sil nussent fait mencion en lour bref qil fussent executours autrement le bref ne vaudreit rienz; nul plus en cas come il demande com heir dobligacion fait a soun pere. — Sch. *Non est simile,* qar executours ne demandent mye com de chose Dette

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[1] dreit is not in L.

[2] The words between brackets are not in L.

[3] L. *Stauf.*

[4] moy is in T. alone.

[5] From T. and L.

[6] From 16560 alone as far as the point at which the larger type ends.

A.D. 1339. due to them, but of what was due to the testator; but the heir demands as in respect of what is due to himself and for his own profit. But let us suppose that an Abbot brings a writ of Debt in respect of an obligation made to his predecessor; he ought never to mention his predecessor in his writ, but in his count; no more in this case. — *Gayneford.* Judgment of the writ; the writ has the word *debet,* whereas when one demands what was due to another the words of the writ should be *injuste detinet* without *debet;* judgment of the writ.—*Trewith.* Your maxim is false, for in a case in which a man demands as heir, he demands a profit due to himself, in which case he shall say *debet,* but in the case of executors, inasmuch as they are to recover for the benefit of the testator's estate, the words of the writ shall be *injuste detinet* only.—*Mallum* said that he ought to have made a descent in his count.—*Gayneford.* His father made acquittance to our father in respect of the same debt. And he put forward the deed, &c.—And it was said that, if the deed of the executors had been put forward, the heir would have been barred. Nevertheless *Quære.*

Debt. § A debt was demanded by an heir against the heir, in a case in which the plaintiff counted that the ancestor of the defendant bound himself and his heirs to the ancestor of the plaintiff and his heirs; but he did not make the descent in the count, and he put forward a specialty in which it was expressed that the obligor bound himself and his heirs to such an one—to him and his heirs and his executors. — *Gayneford.* You demand as heir, and in the writ you are not called heir; judgment of the writ. — SCHARDELOWE. If the heir can have an action in this case, it would be wrong to abate the writ; for in a writ of Debt the cause of the debt shall not be mentioned, but it is sufficient that the writ say that the defendant owes and detains from the plaintiff so much, and the cause shall be declared in the count.—*Gayneford.* I will abide the risk of the law whether he shall have an action in this case or not.—SCHARDELOWE. The Apprentices mean to say that you ought to do so, or else put forward a release by the executors of the plaintiff's ancestor.—And afterwards *Gayneford* put forward a release by the plaintiff's ancestor.

due a eux mes a le testatour; mes heir demande com chose due a luy mesme et a soun profit demene. Mes mettoms qun Abbe porte bref de dette dun obligacion fait a soun predecessour; jammes il ne deit faire mencion en lour bref de soun predecessour, mes en counte; nent plus icy.—*Gaign.* Jugement de bref; le bref voet *debet,* ou qaunt homme demande chose qe fut due a autre le bref dirreit *injuste detinet* saunz *debet;* jugement de bref. — *Trew.* Vostre maxime est faux, qar en cas ou homme demande com heir cest un profit due a luy mesme, en quel cas il dirra *debet,* mes en cas dexecutours la ou il deivent recoverir al oeps le testatour la dirra le bref *injuste detinet* soul. — *Mallum* dit qil dust aver fait un descente en soun counte. — *Geign.* Son pere fist acquitaunce a nostre pere de mesme la dette. Et mist avaunt le fet &c.—Et fut parle si la fet les executours ust este mys avaunt qe leir soit barre. *Tamen quære.* A.D. 1339.

§ Dette[1] demande par heir vers le heir, ou le pleintif conta qe launcestre le defendant obligea lui et ses heirs al auncestre le pleintif et ses heirs, mes il ne fist pas descente en counte, et il mist avant especialte qe voleit qil obligea lui et ses heirs a un tiel, a lui ses heirs et ses executours. —*Gayn.* Vous demandez come heir, et en bref vous nestes pas nome heir, jugement du bref.—Sch. Si leir poet aver accion en ceo cas il serreit peche dabatre le bref; qar en bref de dette homme[2] ne fra pas mencion[3] de la cause de la duite, mes suffit qe le bref die qil lui doit et detient tant,[4] et en counte serra desclare.[5]— *Gayn.* Jeo voille demorer en jupardie de la ley le quel il avera accion en ceo cas ou noun.—Sch. Ceo[6] voudreint les Apprentis[6] qe vous feistes, ou qe vous meisetz avant relees dexecutours launcestre le pleintif.—Et puis *Gayn.* mist avant relees dauncestre le pleintief.[7] Dette. [Fitz. *Dette,* 139.]

[1] This report of the case is from T., L., and 25184.

[2] L. vous.

[3] mencion is not in L.

tant is not in L.

L. deschaper.

[6] T. and L. Les apprentis voleint.

[7] In L. are added, in a later hand, the words *Vide* tiel accion meyntenue *postea isto eodem anno folio.* x. The reference appears to e to No. 32 in Trinity Term.

A.D. 1339. Aid-prayer.

(4.) § Land was given to a man and his wife and his heirs. The husband died, and a writ was brought against the woman.—*Trewith.* You have present here the woman who tells you that the land was given as above; and we tell you that her husband, on his death-bed, gave the same land, after the death of the wife, to J., and B., his executors, to sell and deal therewith for the good of his soul; and we pray aid of J. and B.—*Kelshulle.* He shows nothing in witness of what he has said; judgment whether he ought to have aid; and, by what you show, you show that the succession would be rather to the heir of the husband than to them.—*Parning.* If a man hold for term of life, of my lease, and I grant the reversion &c., and afterwards a writ is brought against the tenant and he prays in aid the grantee of the reversion, he shall never show any interest in the grant, for that did not give him any estate.—STONORE. A man would have no small difficulty in devising a reversion, and making that devise maintainable in law, particularly in this case in which the devise was made to sell and deal therewith for the good of the soul. — *Parning.* Since you are of opinion that we shall not have aid of the executors because the reversion and the right remained in the father of the heir, notwithstanding the devise, we pray that you will be pleased to enter the cause for which we are ousted of the aid.—SCHARDELOWE. We will not adjudge whether the reversion be to the heir or not, but we are of this opinion, amongst us, that the woman shall not have aid of the executors.—*Parning.* We pray aid of the heir.—*Pole.* You prayed the executors in aid, and by that prayer you supposed the reversion to be in them, wherefore you shall not be received to pray in aid the heir, thereby supposing the reversion to be to him, which is contrary to that which you supposed at first.—SCHARDELOWE. If you had at the beginning prayed aid of the heir you would have had the aid; or, perhaps, when you prayed the executors in aid, if you

(4.)[1] § Terre fut done a un homme et sa femme et a ses heires. Le baroun morust, et bref fut porte vers la femme.—*Trew.* Vous avez cy la qe vous dit qe la terre fut done *ut supra;* et vous dioms qe soun baroun en soun lyt moriaunt dona mesme la terre, apres la mort la femme, a J. et B. ses executours a vendre et faire pur salme, et prioms eyde de J. et B.—*Kels.* Il ne moustre rien qe tesmoigne soun dit; jugement sil deyve eyde aver; et, ou ceo la vous moustrez, vous moustrez qe le inherite serreit plus tost al heir le baroun qe a eux.—*Parn.* Si homme tiegne a terme de vie de moun lees et jeo graunt la reversion &c., et pus bref est porte vers le tenaunt et il prie en eyde celuy a qi la reversion est graunte, il ne moustrera jammes ceo qil ad del graunte qar ceo nestut mye a luy.—STON. Homme avereit molt afaire a diviser un reversion, et de meyntenir cele devys par ley, nomement en ceo cas ou le devys fut fait pur vendre et faire pur lalme.—*Parn.* Qaunt vous estes de tiel entent qe nous naveroms mye eide des executours par taunt qe la reversion et le dreit si est en le pere leir, *non obstante* le devis, nous prioms qe vous voillez entrer cause par quele nous sumes ouste del eide.—SCH. Nous ne voloms pas ajugger le quel la reversion soit al heir ou noun, mes nous sumes de cel avys entre nous qe la femme navera mye de les executours.—*Par.* Nous prioms eide del heir.—*Pole.* Vous priastes en eyde les executours, par quele priere vous supposatez la reversion en eux, par quey de priere en eyde le leir, supposant la reversion a luy, qest contrare a ceo qe vous primes supposatez, ne serrez resceu.—SCH. Si vous usez al comencement prie eide del heir vous ussez eu leide; ou, par cas, qaunt vous priastez en eyde les executours, si vous ussez weyve,

A.D. 1339. Eyde priere.

[1] From 16560 alone as far as the point at which the larger type ends.

A.D. 1339. had waived it without having been ousted by judgment, you would have had aid of the heir; but after having been ousted by judgment you shall not have aid of another; wherefore say something else, &c.

Formedon. § Formedon against a woman, who showed that her husband and she purchased to them and to the heirs of her husband, and that, because the tenements were devisable, the husband devised the reversion after the death of the wife to his executors to be sold for the benefit of his soul; and so she held &c., the reversion regardant to the executors; and she prayed aid of them.—STONORE. You do not show anything to witness your statement; besides, you prove that the right is rather in the husband's heir than in the executors, for they have nothing to do but to carry the will into execution. And suppose that the executors die in the lifetime of the wife, who shall have the reversion? I say that the heir would have it; and he who would prove that a reversion can be devised would have much to do; for when shall the tenant for term of life attorn.—*Parning.* It is contrary to common law that lands are devisable, but it is maintained by custom, and their custom is as much to devise reversions as other [estates in] lands; and a man can devise to his own wife for term of her life with remainder over. And, Sir, when a devise is made and the will is proved, the executors ought to enter and then they make execution over; and in the present case I say that after proof of the will, if the wife were dead, it would be for the executors to enter and for none other, and against them should a writ be brought, and they would do what seemed good to them; wherefore they have the right, and the will ought to remain with them and not with us.—SCHARDELOWE. Always until the lands are sold the right is in the heirs; wherefore we oust you of the aid.—*Parning.* Then we pray aid of the heir of our husband.—SCHARDELOWE. This you shall not have when you have been ousted by judgment from the aid which you have prayed.—*Parning.* Your judgment proves the right to be in the heir; wherefore &c.; and we have shown our estate, and it is reasonable that we should have aid of some one.—And SCHARDELOWE ousted him by judgment.

saunz aver este ouste par agarde, vous averez eide del heir; mes qaunt vous feustes ostes par agarde vous naverez mye eyde dune autre; par quei dites autre chose &c. A.D. 1339.

§ Forme[1] de doun vers une femme, qe moustra qe son baron et lui purchacerent a eux et a les heirs son baron, et, purceqe les tenementz sont devisables, le baron devisa la reversion apres le decees la femme a[2] ses executours de vendre[3] en profist de sa alme, et issi tient ele &c., la reversion regardant a les executours, et pria eide deux.—Stonore. Vous ne moustrez rien de tesmoigner vostre dit; ovesqe ceo vous provez qe le dreit est plus toust en leir le baron qen les executours, qar il nont rien forsqe execucion a faire. Et jeo pose qe les executours deviassent vivant la femme, qi avera la reversion? Jeo die qe leir lavereit; et il avereit molt a faire qe provereit qune reversion put estre devise; qar qant attournera le tenant a terme de vie?—*Parn.* Cest contre comune dreit qe terres sont devisables, mes cest meintenu par usage, et lour usage est auxi avant a deviser reversions come autres terres; et homme poet deviser a sa femme demene a terme de sa vie, le remeindre outre. Et Sire, qant devys est fait et le testament est prove, les executours deivent entrer et ils font execucion donqes outre; [et en le cas ou nous sumes jeo die apres le testament prove, si la femme fust mort, as executours serreit][4] dentrer et a nul autre, et vers eux serreit le bref porte et ils fereint ce qe bien lour fust; par quei ils ont le dreit, et le testament deit demoerer a eux et noun pas a[5] nous. —Sch. Touz jours tanqe les terres soient venduz le dreit est en les heirs; par quei nous vous oustoms del eide.[6]—*Parn.* [Donqes prioms eide del heir nostre baron.—Sch. Ceo naverez[7] pas qant vous estez ouste par agard del eide qe vous priastes.—*Parn.*][8] Vostre agard prove le dreit en leir; par quei &c.; et nous avoms moustre nostre estat, et il est resoun qe dascun eioms leide.—Et Sch. lui ousta par agard.

Forma donationis. [Fitz. *Devise*, 10.]

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[1] This report of the case is from T., L., and 25184.

[2] L. et.

[3] L. devindrent.

[4] The words between brackets are repeated in L., with the exception that donqes is once substituted for serreit.

[5] T. and 25184, vers.

[6] The words qe vous priastes are added in L.

[7] L. navendrez.

[8] The words between brackets are not in 25184.

A.D. 1339. (5.) § A writ was brought against J. who made default; wherefore the Grand *Cape* issued. On the day on which the Grand *Cape* was returnable, J. came, and *Gayneford* said for J. that he could hear but could not speak, and, if the Court would permit it, he was ready to wage his law with regard to non-summons, and the COURT caused the book to be given to him, and he placed his hand upon it, and SIR JOHN DE STONORE delivered his charge, and asked whether J. would be sworn. And J. was willing to be sworn, but he could not speak; and then the attorney waived the default.—*Quære,* what if the demandant had held to the default absolutely? The opinion of the COURT, however, was that [the wager of law] would have been good enough. And so note.

Note. § Note that one who had by his attorney waged his law with regard to non-summons, in a plea of land, came in his own person, and he could not speak but only make signs, and he heard and understood what was said to him.—And STONORE said to him, "If you will make the law, put your hand on the book." And he put his hand thereon, and the words of the charge were repeated to him by the COURT. And then the demandant waived the default. Wherefore he took nothing.

Dower. (6.) § Note that a woman brought a writ of Dower, where the tenant vouched a stranger who entered into warranty and lost; and the woman recovered against the tenant, and he recovered over to the value. And he sued to have to the value, and the Sheriff returned that the vouchee had nothing whereof the value could be had except a certain rent issuing out of a manor, which manor he who now sued held of the vouchee's lease for the term of his life, paying to the vouchee the rent. And the Sheriff could not make livery to the tenant of rent issuing from the land which he himself held. Whereupon *Trewith* prayed a writ to the Sheriff to recoup so much of the rent which the tenant paid to the lessor as amounted to the value which the tenant ought to recover against him, so that it might be retained in

(5.)[1] § Bref fut porte vers J. qe fit defaute, par quei le graunt *Cape* issit. Al graunt *Cape* retournable J. vint et *Geign.* dit pur J. qil put oyer et ne mye parler, et si la court voleit soeffrer il fut prest de gager sa ley de nounsomons et la COURT luy fist bailler la liver, et il mist la mayn sour ceo, et SIRE JOHAN DE STONORE[2] dit soun charge et demanda sil voleit jurer, et il fut en volunte destre, mes il ne put mye parler, et pus lattourne weyva. *Quære* sil ust pris a la defaute tut atrenche &c.? Mes opinioun de COURT fut qe serreit assez bon. *Et sic nota.* A.D. 1339.

§ Nota[3] qun qavoit par son attourne gage la ley de noun somons, en plee de terre, vynt en propre persone, et ne poait parler mes faire signes, et il oit et entendist ceo qe homme lui dit. — Et STONORE lui dist Si vous volez faire la ley mettez vostre mayn sour le livere. Et il mist sa mayn,[4] et les paroles de la charge lui furent dites par COURT.—Et donqes le demandant weyva la defaute. Par quei il ne prist rienz. Nota. [Fitz. *Ley*, 49.]

(6.)[5] § Nota qune femme porta bref de Dower, ou le tenant voucha estrange qe entra &c. et perdist,[6] et la femme recoverist vers le tenant, et il a la value. Et il suyst daver a la value, et le Vicounte retourna qil navoit rien destre fait en value mes certein rente issuant dun manoir, quel manoir celui qe suyst ore tient de son lees, a terme de sa vie, fesaunt a lui la rente. Et il ne poet faire livere a lui de rente issuant de terre qil tient mesme. Sur quei *Trew.* pria bref al Vicounte de recouper tant de la rente qil fait a son lessour come sa value amount quel il devereit recoverir vers lui, issi qe de tant il lui soit tenuz en le Dower. [Fitz. *Recovere en Value*, 2.]

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[1] From 16560 alone as far as the point at which the larger type ends.

[2] MS. Stobbur.

[3] This report of the case is from T., L., and 25184. placed second in this

[4] 25184, Et issint fist.

[5] From T., L., and 25184 as far as the point at which the larger type ends.

[6] The words et perdist are not in T.

A.D. 1339. his hands to that extent.—SCHARDELOWE. You pray what is right, and you shall have it; and the Sheriff could not have done this of his own authority without a writ; and his return was good.

Dower.

§ A writ of Dower was brought &c. The tenant vouched to warranty the heir of the woman's husband by virtue of his own deed. And the case was such that, after the death of her husband, the heir entered upon the manor of C. whereof she demanded the third part, and enfeoffed the tenant who was to render to him twenty shillings *per annum*. And afterwards it was adjudged that the woman should recover against the tenant, and the tenant over to the value. The tenant sued a writ to the sheriff to have execution. The sheriff returned that there was nothing upon which he could make execution to the value except twenty shillings of rent issuing out of the land, of two parts of which the tenant was seised.—*Trewith.* We pray that the sheriff be amerced, for he could have made execution of the rent—SCHARDELOWE. We have no reason to amerce him.— And afterwards *Trewith* prayed a writ to the sheriff to extend the land, and then to abridge the rent. And he had it.

Execution on a Statute Merchant: Venire Facias.

(7.) § A man sued execution of lands on a Statute Merchant, and then leased his estate to another. The recognisor came and showed an acquittance for part of the debt, and was ready to pay the rest, and he prayed a writ to warn the two [to show] why he should not have his land again; and he was told to go to the Chancery. And he did so; and there he had a writ to the Justices setting forth his matter, and directing them to cause the two to come and show cause why &c. Wherefore a *Venire facias* issued. The Sheriff returned that the recognisee was mainprised, and as to the other that he had nothing.—*Trewith.* He has assets in another county (and he showed where); and we pray a writ to the Sheriff of that county. And this was granted to him; for upon a Statute Merchant process shall be made everywhere, and not as upon an ordinary recognisance.

mayns.—SCH. Vous priez resoun, et vous laverez; et ceste chose ne poet le Vicounte aver fait de lui mesme sanz bref; et son retourn[1] fust bon. A.D. 1339.

§ Bref[2] de dower fut porte &c. Le tenaunt voucha a garrant leir de baroun la femme par soun fet demene. Et la cas fut tiel qe puis la mort soun baroun leir entra en la manoir de C. de qi il demande la terce partie, et enfeffa le tenaunt rendaunt a luy xx.*s.* par an. Et pus agarde fust qe la femme recoverist vers le tenaunt, le tenaunt outre a la value. Le tenaunt suyst bref a vicounte daver execucion. Le vicounte retourna qil navoit rien de faire a la value mes xx.*s.* de rente issaunt de la terre de qi le tenaunt est seisi de ij. parties. — *Trew.* Nous prioms qil soit amercie, qar il put aver fet execucion de la rente.—SCH. Nous navoms cause de luy amercier.—Et pus *Trew.* pria [bref] a viscounte desteindre la terre et dounqes de bregger la rente. *Et habuit.* Dower.

(7.)[3] § Un homme suyst execucion des terres sur estatut marchant, et puis lessa son estat a un autre. Le reconisour vynt et mostra acquitance de partie de la dette, et le remenant il fust prest a paier, et pria bref de garnir les ij. par quei il ne duist reaver sa terre; et dit lui fust quil alast a la Chauncellerie. *Et ita fecit*; et avoit illoeqes[4] bref as[5] Justices compernaunt sa matere, et qils feisent venir les ij. a mostrer resoun[6] pur qei &c.[7] Par quei *Venire facias* issit. Le Vicounte retourna qe le reconisse fust par maynprise, et qaunt a lautre il navoit rienz.—*Trew.* Il ad assetz en un autre counte; et dist ou;[8] et prioms bref a cel Vicounte. Et ceo lui fust grante; qar en estatut marchant proces se fra par tout, [et ne mye come en une reconisaunce].[9] Execucion sur estatut marchant: Venire Facias. [Fitz. *Suggestion*, 17.]

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[1] T. and L. respons.

[2] This report of the case is from 16560 alone.

[3] From T., L., 16560, and 25184.

[4] 16560, le.

[5] L. au.

[6] resoun is in 16560 only.

[7] The words pur qei &c. are in L. and 25184, but not in T. nor in 16560.

[8] ou is not in L.

[9] The words between brackets are in 16560 alone.

A.D. 1339. Scire Facias.

(8.) § An advowson was rendered by fine, and, afterwards, at the next vacancy, the heir of him who rendered raised a dispute, whereupon he to whom the render was made prayed a *Scire facias* against the heir, out of which it was his intention to have a writ to the Bishop. And it was said that such a writ had been known to be granted out of a record upon a writ of right of advowson.—*Trewith.* We pray the writ against the heir of him who rendered ; otherwise, if we do not have it, inconvenience will ensue, for if we bring the *Quare impedit* we have to count of some presentation, in which case he will be received to traverse it, and so, in a manner he would avoid the fine which stands in force, for he will not be ousted from the averment since it will not be contrary to the render or to the fine ; besides the case is not as if we prayed the writ against a stranger. — *Parning.* This thing has very often been seen ; wherefore we pray it.—And afterwards it was granted to him.—Enquire further concerning this writ.

Scire Facias.

§ A man granted an advowson to one B. Afterwards the church became vacant. B. would have presented but was disturbed. He sued a *Scire facias* upon the fine. Now there was difference of opinion among the JUSTICES whether he could have the writ to the Bishop upon the *Scire facias* ; and *Mallum* said he had himself seen a case in which the plaintiff had a writ to the Bishop upon a *Scire facias.*

(9.) § Note that Scrope took an acknowledgment beyond sea by virtue of a *Dedimus potestatem* which he had from the King, who was at that time beyond sea, at Antwerp, and his writ of warrant was in the words "Whereas our writ of covenant is pending concerning "three manors," in respect of which the acknowledgment

(8.)[1] § Une avowesoun[2] fut rendu par fyn, et apres a la prochein voidaunce leir[3] celuy qe rendi myst debat, sour qei celuy a qi le rendre &c. pria *Scire facias* vers luy, hors de quel sa entente fut daver bref al Evesqe. Et fut dit qe ceo ad este vewe qe tiel bref ad este grante hors dun record sour un bref de droit davowesoun.—*Tr.* Nous prioms le bref vers leire celuy qe rendi, ou, si nous ne leioms, inconveniens suera,[4] qar si nous portoms le *Quare impedit* il nous covent countere dascune presentement, ou il serra resceu de traverser le, et issi en maner il voidereit[5] la fyn qe esta en sa force, qar il ne serra pas ouste del averrement del hure qe ceo ne serra pas en contrarie del rendre, ne de la fine; ovesqe ceo il est autre qe si nous le praaiames vers estrange.—*Parn.* Ceste chose ad este vewe moult[6] sovent; par quei nous le prioms. —Et puis ceo luy fut grante.—*Quære plus de brevi.*

A.D. 1339. Scire Facias. [Fitz. *Scire facias*, 118.]

§ Un[7] homme graunta un avowesoun a un B. Pus leglise se vòida. B. voleit aver presente, et fut destourbe. Il suy un *Scire facias* hors de la fyn. Ore fut debat entre les JUSTICES le quel il put aver bref al Evesque en la *Scire facias;* et *Mallum* dit qil vist mesme ou il aveit bref al Evesqe en le *Scire facias.*

Scire Facias.

(9.)[8] § Nota qe Scrope prist une conissaunce de la la mere par un *Dedimus potestatem* quel il avoit[9] du Roi qe adonqes estoit outre mere[10] a Andewerpe,[11] et soun bref de garrant voleit *Cum breve nostrum de conventione pendeat*[12] *de iij. maneriis* dount la conissaunce fut fait. Et par comaundement le Roi et par

[1] From T., L., and 25184 as far as the point at which the larger type ends. This and the following fourteen cases (Nos. 8–22) appear in L. as of Hilary Term, but in the other MSS. in which they occur as of Easter.

[2] L. avowerie.

[3] leir is in T. only.

[4] T. serra.

[5] L. vodreit.

[6] moult is not in L.

[7] This report of the case is from 16560 alone.

[8] From T., L., and 25184.

[9] L. qil y avoient.

[10] L. de la la mere, instead of outre mere.

[11] T. Handywerpe; L. Adewerpe.

[12] L. pendant; T. pendent; 25184, pendaunt.

A.D. 1339. was made. And by command of the King, and by letter under the targe,[1] the Chancellor of England was commanded to make a writ of covenant of the same date as the *Dedimus potestatem.* And, forasmuch as the manors were in two counties, two writs of covenant issued out of the Chancery returnable now. And the defendant in the writ, who had made the acknowledgment as above, proffered himself, and prayed that he who brought the writ might be called, and the latter came not. Whereupon the defendant prayed judgment upon the nonsuit. And on the morrow the plaintiff came and prayed that the note might be made in accordance with the acknowledgment, so that the fine might be engrossed. — *Trewith.* We pray judgment on the nonsuit.—STONORE. You shall not have that, for we cannot defeat the acknowledgment which is of record.—*Trewith.* It seems that the acknowledgment is not of record, for the King, when he went beyond sea, left his Chancery in England, and his Guardian of the Realm, and a *Dedimus potestatem,* according to common law, should issue from the Chancery. Besides the writ of *Dedimus potestatem* is in the words "Whereas our writ of covenant is pending" &c., by which it is supposed that there was but one writ of covenant, whereas the manors are in two counties; and it is supposed by the existence of the two writs of covenant that they are both pending; wherefore there is a variance between his warrant and the original writs; and consequently the acknowledgment is null, for it is taken without warrant; for, if one of the Justices took an acknowledgment in the country by virtue of a *Dedimus potestatem* which was not in accordance with the writ of covenant, you would hold the acknowledgment void.—*Parning.* [The writ of] the King is of record, in whatsoever part of the world he may be; and you, who have made the acknowledgment, cannot have the advantage

[1] A seal commonly used when the King was out of England, and sent his mandate to the Chancellor who had the custody of the Great Seal in England.

lettere de suz la targe commande fut a Chaunceler Dengleterre de fere bref de covenant de mesme la date qe le *Dedimus potestatem* fut. Et, pur ceo qe les maniers furent en ij. Countes, ij. brefs de covenantz issirent hors de la Chancellerie retournables ore. Et le defendant en le bref qe avoit fet le conissaunce,[1] *ut supra,* se profri et pria qil qe porta le bref fut demande, et il ne vynt pas. Sour qei il pria [2] jugement sour la nounsuit. Et lendemain le pleintif vynt et pria qe sour la conissaunce note se fist issi qe la fyn se purreit engrosser.—*Trew.* Nous prioms jugement sour la nounsuete.—STON. Vous naverez pas, qar nous ne poms defere la conissaunce qe est de recorde.—*Tr.* Il semble qe ceo nest pas de recorde, qar le Roi quant il ala outre mere il lessa sa Chauncellerie en Engleterre, et son Gardeyn de la terre, et *Dedimus potestatem* de comune dreit deit [3] issir de la Chauncellerie. Ovesqe ceo le bref de *Dedimus potestatem* voet *Cum* [4] *breve nostrum de conventione pendeat* &c., supposant qil ny avoit qun bref, ou les maners sount en ij. Countes; et cest suppose par les brefs de covenaunt qe *pendent;* par quei y [5] ad variaunce entre soun garrant et les originals; et *per consequens* la conissaunce nul, qar est pris saunz garrant; qar, si un des Justices prist une conissaunce en pais par *Dedimus potestatem* qe fut desacordaunt al bref de covenant, vous tendrez la conissaunce voide.—*Par.* Le Roi est de record qel part qil soit par mye le mounde; et vous qe avez fet la conissaunce avez perdu lavantage de countrepleder

A.D. 1339.

[1] L. reconisance.
[2] 25184, demanda.
[3] T issera instead of deit issir.
[4] L. come.
[5] T. il luy.

A.D. 1339. of pleading in opposition to your own assent.—SCHARDELOWE. Certainly, that is true, and therefore the COURT will consider it.—Afterwards, in Trinity Term, the plaintiff appeared by attorney [constituted] to receive one part of the chirograph, and not to [prosecute] the writ of covenant, and the exceptions were rehearsed.—SCHARDELOWE. We are not yet advised; and no party to the original writ now appears; and I know well that, according to law, the parties ought to have a day upon the original writ until the concord has been accepted by the Court, and therefore be advised, &c.—And afterwards a writ came to make the note notwithstanding the exception; but, forasmuch as this writ did not agree, the Court did not proceed.—*Stouford.* The plaintiff does not appear either in his own person or by attorney, for he has made his attorney only for the purpose of receiving one part of the chirograph.—*Parning.* The attorney could not be constituted for any other purpose, for the plea of covenant is ended by the concord which is of record.—*Stouford.* Until the note is drawn up the original writ stands, and the parties have their day thereupon; wherefore &c.—And afterwards, in Easter Term in the fourteenth year, they held to it that the plaintiff was nonsuit on the writ of covenant, and that the plea was thus discontinued, &c., and all the other matters as above. —*Parning.* When the acknowledgment is made by *Dedimus potestatem,* the plea upon the writ of covenant is brought to an end, and never afterwards can plea or process be made upon the original writ between the parties, for if it were so &c. the acknowledgment would lose its force by the death of one of the parties, and the writ would abate. Consequently their argument is untenable.—*Mallum.* I know well that it is so [as *Stouford* argued], for after the making of the acknowledgment in the country the party can be essoined upon the writ of covenant, and twenty writs of covenant are continued and have been in this Court for a long time in similar case. And to this the COURT agreed.—STONORE. I know

vostre assente demene.—SCHD. Certes cest verite, et pur ceo la COURT savisera.—Puis, la terme de la Trinite, le pleintif apparust par attourne de resceivere *partem chirographi* et non pas al bref de covenant, et les challenges furent reherces.—SCHD. Nous ne sumes pas avisez unqore; et il ny ad ore nul partie al original; et jeo sai bien de leie qe les parties dussent aver jour sour loriginal tanqe le pees fut accepte de Court, et pur ceo avisez vous, &c.—Et puis[1] bref vint de faire la note *non obstante* la challenge; mes, pur ceo qe le bref nacorda point, Court arestut.[2]—*Stouf.* Le pleintif nest poynt en propre persone ne par attourne, qar il ad fait soun attourne *ad capiendum partem chirographi.*—*Parn.* Autrement ne serra il fait,[3] qar par la pees qest de recorde le plee de covenaunt est determine.—*Stouf.* Tanqe la note soit leve loriginal estet, et a cel ount parties lour jour; parquei[4] &c.—*Et postea,*[5] *Paschæ xiiij°*, ils pristerent a ceo qe le pleintif[6] fut noun siwi al bref de covenaunt, et issi le plee discontinue &c., et touz les autres choses *ut supra.*—*Par.* Quant la conissaunce est fet par *Dedimus potestatem* le plee est termine sour le bref de covenaunt, et james apres plee ne proces ne serra fet sour loriginal entre les parties, qar si issi fut &c. par mort de partie la conissaunce perdereit sa force et le bref abatereit; *consequenter falsum.*—*Mallum.* Jeo sai bien qil est issi, qar apres la conissaunce rendu[7] en pais la partie sour le bref de covenaunt poet estre essone, et xx. brefs de covenauntz sount continuez[8] et ount este ceinz par grante temps en tiel[9] cas. *Ad*[10] *quod* CURIA *consensit.*[11]—STON. Jeo

A.D. 1339.

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[1] L. sour ceo.
[2] T. narestut; L. a restute.
[3] L. pas.
[4] The word parquei is in L. only.
[5] The words *Et postea* are not in T.
[6] 25184, la partie.
[7] L. rendereit; T. trete.
[8] 25184, contenuz.
[9] L. ceo.
[10] Ad is in L. only; 25184, Et.
[11] L. *concessit.*

A.D. 1339. Judgment: Fine to be engrossed.

well that it is so; but it is not to the purpose in this matter, for the writ is well continued, for he made his attorney sufficiently before me, and the King has commanded us by writ that, notwithstanding all the exceptions, we make the note and engross the fine. Wherefore sue to have the note made.—If you suffer any injury sue elsewhere.

Note: Fine.

(10.) § Note that a fine was levied, to wit that J. and A. his wife acknowledged the manor, &c., to be the right of S. as that which he had (so far as two parts of it were concerned) of their gift, and they granted that the third part of the same manor, which a tenant held for term of life, &c., should remain to him and his heirs for ever; and for this acknowledgment S. granted the same two parts of the manor to J. and A. his wife and the heirs of their two bodies issuing, and settled &c. the remainder over; and the third part remained where it was first settled.

Note

(11.) § Note that by judgment of the COURT a woman was received by bill to be her husband's attorney; and she was [described as] Juliana the wife of Roger. —*Quære.*

Assise of Novel Disseisin.

(12.) § An Assise was brought[1] in the country[2] against John de Cherleton, and Hawise his wife, and several others. All, except the husband and his wife, made default. By reason of their default the assise was awarded against them. The husband and his wife came and pleaded in bar a record of a judgment given in this Court. The plaintiff said, "Produce your record," &c. And they were adjourned into the Common Bench, &c.

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[1] By Thomas Retherik, knight. | [2] In Shropshire.

sai bien qil est issi; mes ceo nest pas a purpos en ceste matere, qar le bref est bien continue, qar il fist[1] attourne devant moy suffisauntement, et le Roi nous ad maunde par bref qe nient countre esteaunts touz[2] le challenges qe nous fasoms la note et qe nous engrossoms la fyn; par quei suez qe la note se face.[3]—Si home vous face tort, suez aillours. A.D. 1339. Judicium de fine ingrossato.

(10.)[4] § *Nota* qun fin fuist leve, saver[5] qe J. et A. sa femme conussent le manoir &c. estre le dreit S. come ceo qil ad les ij. parties de lour doun, et graun-tent qe la terce partie de mesme le manoir quel un tenaunt tient a terme de vie &c. remeyne a luy[6] et a ses heirs a touz jours; et pur[7] cel reconissaunce S. graunta mesmes les ij. parties du manoir a[8] J. et A. sa femme et les heirs de lour deux corps,[9] &c., et tailla, &c., outre le remeyndre;[10] et la terce partie demora ou ele fut primes taille. Nota: Finis. [Fitz. *Fynes*, 66.]

(11.)[11] § *Nota* qe par agarde de COURT une femme fut resceu par bille destre lattourne soun baroun;[12] et fust *Juliana uxor Rogeri.—Quærc.* Nota. [Fitz. *Attourne*, 73.]

(12.)[13] § Un assise fut porte en pays vers Johan de Cherleton, et Hawise sa femme,[14] et plusours autres. Touz forprise le baroun et sa femme fesoient defaute. Par lour defaute lassise fut agarde vers eux. Le baroun et sa femme vindrent et plederent en barre par un record taille cy en ceste Court. Le pleintif dit cerieccez vostre record &c. Et ils furent ajournez en Comune Baunk &c. A quel jour le baroun fist de- Assisa Novæ Disseisinæ. [13 Li. Ass. 1.]

[1] L. fut.

[2] touz is not in 25184.

[3] 25184, qe de faire la note et, instead of qe la note se face.

[4] From T., L., 16560, and 25184.

[5] 16560, si.

[6] The words a luy are repeated in L.

[7] 16560, Apres instead of et pur.

[8] L. et.

[9] 16560, en fee taille, instead of et les heirs de lour deux corps.

[10] The report ends here in 16560.

[11] From T., L., and 25184.

[12] In L. and 25184 the case ends here.

[13] As far as the point at which the larger type ends this report is from 16560, but corrected by the record (*Placita de Banco*, Easter, 13 Ed. 3, R° 60.)

[14] 16560, vers J. de C. et Alice.

A.D. 1339. Upon the day given the husband made default, and the wife prayed to be received to defend her plea.—*Pole.* The husband and wife previously pleaded the record, and they had their day now &c., and the husband does not come; thus by their plea they are convicted of being disseisors;[1] judgment whether she shall be received.—SCHARDELOWE. The plea which they pleaded was the plea of the husband; wherefore that shall not oust her from being received.—And because he said nothing more she was received.—*Stouford.* You have here the wife who vouches to warranty, in respect of one messuage and ten acres of land and ten acres of wood, comprised in the view and the plaint, Owen de Cherleton, who was one of those named in the writ, and who is ready here in Court to warrant.—*Pole.* This is an Assise of Novel Disseisin, in which no other can be vouched but one who is himself named in the writ; and he who is vouched, though named in the writ, is one of those against whom the assise has been awarded; wherefore she shall not be received to bring into Court now by means of voucher one against whom the assise has been awarded.—And, notwithstanding this, he was received to warrant.—*Stouford.* You have here Owen, appearing as tenant in virtue of the warranty given by him, who tells you that on a certain day, &c. he himself brought an Assise of Novel Disseisin against him who is now plaintiff, in respect of the same land, before F., W., and SCHARSHULLE, JUSTICES assigned to take ASSISES in the County of Salop. Process was continued until he recovered; judgment whether you ought to have assise upon assise. And as to the woman who is received she tells you that she brought an Assise of Mort d'Ancestor in respect of the same land now put in view (except the messuage &c.) upon the death of Griffin de la Pole, her uncle. Process was continued until the points of her

[1] According to the Statute 13 Ed. I. (Westm. 2), c. 25.

faute, et la femme pria destre resceu a defendre soun plee. — *Pole.* Avaunt ses hures le baroun et sa femme plederent qe par un record, et avoient jour ore &c., et le baroun ne vient pas; issint par lour plee ils furent atteintz disseisours; jugement si ele serra resceu. — SCHAR. Le plee qils plederent fut le plee le baroun; par quei ceo ne oustera mye qele serra resceu.—Et pur ceo qe il ne dist autre chose ele fut resceu. — *Stouf.* Vous avez cy la femme qe vouche a garraunt dun mies et x. acres de terre et x. acres de bois,[1] compris en vewe et en pleinte, Ouen de Cherleton,[2] qe feut un de eux qe fut en le bref, qe prest est cy en Court de garrantir.—*Pole.* Cest un assise de novele disseisine ou autre ne put estre vouche forqe mesme celuy qest nome en le bref; et celuy qest vouche est nome en le bref vers qi lassise fut agarde; par quei de mener ore celuy en Court par voucher vers qi lassise fut agarde ele ne serra resceu. *Et hoc non obstante,* il fut resceu de garrantir.—*Stouf.* Vous avez cy Ouen,[3] tenaunt par sa garrantie, qe vous dit qe certein jour &c. il mesme porta un assise de novele disseisine vers mesme celuy qe se pleint, de mesme la terre, devaunt F., W., SCHS., JUSTICES assignes a les ASSISES prendre en le Counte de S.;[4] proces continue taunqe il recoverist; jugement si assise sour assise devez aver. Et qaunt a la femme qest resceu ele vous dit qele porta un assise de mort dauncestre de mesme la terre mys en vewe, forprise le mies &c.,[5] de la mort Griffin de la Pole[6] soun uncle; proces continue taunqe les pointes de soun bref furent

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[1] 16560, dune acre de terre, instead of dun mies et x. acres de terre et x. acres de bois.

[2] 16560, Gion de C.

[3] 16560, Gyon.

[4] 16560, T.

[5] 16560, lacre de terre.

[6] 16560, Robert Sutbur.

A.D. 1339. writ were found; wherefore she recovered. And we tell you that the estate which this same plaintiff had was mesne between the death of her uncle upon whose death she brought the Mort d'Ancestor and her recovery; judgment whether, upon this, assise &c.—*Pole.* As to Owen who appears as tenant in virtue of the warranty given by him, we tell you that long before this record and this disseisin which he has alleged we were seised until disseised by him; and we pray the assise. And as to the wife, we tell you that one John de Llandisilio, chaplain, was seised of the same land, and gave it to him upon whose death she has alleged the recovery by the Mort d'Ancestor, and to his wife—to them and to the heirs of their two bodies begotten—and if they should die [without issue] that the land was to remain to the plaintiff—to him and to his heirs for ever. And we tell you that the wife died without heirs between them &c., and afterwards her husband died, after whose death the plaintiff entered as in his remainder; so he was seised until disseised by the defendant; judgment whether by any recovery had by this same person you can oust us from this assise; and we pray the assise in respect of damages.—*Stouford.* You see clearly how we have alleged an Assise of Mort d'Ancestor, and to this he says that our same ancestor had only a fee tail, so that the plea which he offers is in nullification of our record, wherefore we will aver that the uncle died seised in his demesne as of fee and of right, without this that he ever had anything of the gift, &c.—*Pole.* The estate that he had was as we have said; ready &c.—*Pole.* You have heard how Owen, appearing as tenant by virtue of the warranty given by him, has pleaded in bar, and how we have said that, before the disseisin and this record which he alleges, we were seised until by him disseised; and we tell you that the land was given, as above, the remainder to us; so we were seised until disseised by him, and we pray the assise. — *Stouford.* You have

trovez; par quei ele recoveri. Et vous dioms qe lestat qe mesme cely aveit qe se pleint fut entre la mort soun uncle de qi mort il porta le mordauncestre et soun recoverir; jugement si de ceo assise &c. — *Pole.* Qaunt a Ouen,[1] qest tenaunt par sa garrantie, vous dioms qe long temps devaunt cel record et cel disseisine qil ad allegge nous sumes seisi taunqe par luy disseisi; et prioms lassise. Et qaunt a la femme vous dioms qe un Johan de Landissilyau, chapelein,[2] fut seisi de mesme la terre, et dona a celuy de qi mort il ad allegge le recoverir par la mordauncestre, et a sa femme, a eux et a les heirs de lour ij. corps engendrez, et si deviassent &c. qe la terre remeindreit a celuy qe se pleint, a ly et a ses heirs a touz jours. Et vous dioms qe la femme morust saunz heirs entre eux &c., et pus le baroun morust, apres qi mort il entra come en son remeindre; issi fut il seisi taunqe par luy disseisi; jugement si par nul recoverir fait par mesme cest nous pussez de cest assise ouster; et prioms lassise en dreit de damages.—*Stouf.* Vous veez bien coment nous avoms allegge un assise de mortdauncestre, et a ceo dit il qe mesme ceste nostre auncestre navoit qe fee taille, issint le plee qe il doune est en anenticement de nostre record, par quei nous volons averer qe il mourust seisi en soun demene come de fee et de dreit, saunz ceo qe il navoit unqes riens del doun &c.—*Pole.* Lestat qe il avoit si fut com nous avoms dit; prest &c. — *Pole.* Vous avez entendu coment Ouen[3] tenaunt par sa garrantie ad plede en barre, et coment nous avoms dit qe, devaunt la disseisine et cel record qe il allegge, nous fumes seisi taunqe par luy disseisi; et vous dioms qe la terre fut done *ut supra* le remeindre a nous; issi fumes seisi taunqe par luy disseisi, et prioms lassise. — *Stouf.* Vous avez

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[1] 16560, G.
[2] 16560, un W.
[3] 16560, Gyon.

A.D. 1339. heard how we have pleaded in bar, and this plea he has admitted; and he has said nothing else, except that before this time he was seised until disseised by us, and he has not shown that this was so by any very cause; judgment whether he ought to have another assise. — SCHARSHULLE. He has admitted what you say, and he says that, before this time, he was seised until, &c., and he has shown something by way of cause, wherefore he has sufficiently met your exception; and there is not one of us who has not twenty times seen awarded an assise in respect of a disseisin higher up without the manner having been shown.— *Trewith.* Our plea in bar is made with no other intent but that you shall not be received to say that your estate here was other than by disseisin; and what you say here is the contrary; for, let us suppose that you were previously disseised by us and that afterwards you ousted us, and that we brought the Assise against you and recovered, then I say that the Assise would have made a false oath, in which case you are put to your Attaint, wherefore you shall not be received to offer the averment that you were seised and disseised previously, which would be contrary to the finding of the Assise. — SCHARSHULLE. It might very well be that there was such a recovery as he has mentioned, that this was truly said, and that before that time the plaintiff was seised and disseised, and that upon such seisin the plaintiff would have a writ of Right; and the same reason which gives him a writ of Right gives him also an Assise in this case, &c.—SCHARDELOWE. It might be as *Trewith* has said, and that the entry was not maintained so as to change the estate; and in that case what the plaintiff says is not contrary to the record. — SCHARSHULLE. One would say that it is a good bar to say, "You "disseised me and I ousted you, &c." (But this was denied.) "Wherefore since you might have come at

entendu coment nous avoms plede en barre, quel plee il ad conu; et il nad autre chose dit mes devaunt ceo temps qe il fut seisi taunqe par nous disseisi, et ceo nad il pas moustre qe ceo fut par verroy cause; jugement sil deive unquore lassise aver.—SCH. Il ad conu ceo qe vous ditez, et dit qe devaunt cel temps il fut seisi taunqe &c., et ad moustre par cause, par quei il ad assetz servi a vostre chalenge; et il nad nul de nous qe nad xx. foith vieu agarde assise de disseisine de plus haut saunz moustrer coment. — *Trew.* Nostre barre est a nul autre entent mesqe vous ne serrez resceu a dire qe vostre estat si fut altre qe par disseisine; et ceo qe vous ditez si est le contrare; qar mettoms qe vous fussez disseisi devaunt par nous et pus vous nous oustatez, et nous portames lassise vers vous et recoverimes, mes jeo die qe lassise fesist faux serement, en quel cas vous estes mys a vostre atteint, par quei de tendre averement qe vous fussez seisi et disseisi devaunt, qe serreit acontrare de ceo, vous ne serrez mye resceu. — SCHR. Il put estre assetz bien qe il yavoit un tiel recoverer com il ad parle, qe ceo fut veritable, et qe devaunt ceo temps il fut seisi et disseisi de quel seisine il avereit un bref de dreit; et mesme la resoun qe luy doune un bref de dreit si luy doune assise &c. — SCHRD. Il put estre come *Trew.* ad parle et qe lentre ne fut pas meintenu si com changer destat; par quei ceo qe il parle nest pas acontrare de record.—SCH. Homme voet dire qe il est bon barre a dire vous me disseisites et jeo vous oustay &c. (*Quod negatum fuit.*) Par quei del hure qe vous purrez a

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A.D. 1339. " the time [and pleaded this] but did not come, you " shall not be received to plead contrary to the record." —*Parning.* We quite admit that; but we tell you that we were previously seised and disseised. — *Stouford.* You have not shown that, for the remainder of which you have spoken might as well be after as before the recovery. — Afterwards the plaintiff made his title by the remainder, as above, and the other traversed his title as above. So to the country.

Note: Assise of Novel Disseisin.

§ Assise of Novel Disseisin against a man and his wife and several others in the country. All made default except the husband and his wife who alleged a recovery in bar of the assise. And the record was denied; whereupon the parties were adjourned into the Bench because the record was alleged to be there; and on the day the husband made default. — *Parning.* They have failed of their record, wherefore we pray seisin.— *Stouford.* You have here the wife, and she prays to be received. —*Parning.* That cannot be, for the effect would be that she would excuse herself with respect to a disseisin whereof she is convicted according to the Statute,[1] and this has the effect of a judgment. — Nevertheless she was received. And then she vouched another with respect to a parcel; and he was named [in the writ]; and he was ready to warrant.— *Pole.* He is out of Court, for by his default the assise is awarded, and no other can be received; upon this writ, to warrant, but one who is a party, for process cannot be had against a vouchee here. — Nevertheless he was received to warrant, and pleaded in bar by a recovery on an Assise of Novel Disseisin against the plaintiff, and demanded judgment whether there ought to be assise upon assise.—And as to the rest the wife herself pleaded in bar by a recovery that she and her husband had in an Assise of Mort d'Ancestor, on the seisin of one A., her uncle, against a stranger; and the estate of the plaintiff was mesne between the death of her ancestor and her recovery; judgment whether there ought to be assise.—

[1] 13 Ed. I. (Westm. 2), c. 25.

tiel temps aver venu et ne venistes mye vous ne serrez resceu a dire le contrarie.—*Par.* Nous conussoms bien, mes nous vous dioms qe devaunt nous fusmes seisi et disseisi.—*Stouf.* Ceo navez mye moustre, qar le remeindre quel vous avez parle ceo put estre auxi bien pus com devaunt le recoverir.—Pus il fist title par remeindre, *ut supra*, et lautre traversa soun title, *ut supra. Sic ad patriam.*[1] A.D. 1339

§ Assise[2] de Novele Disseisine vers un homme et sa femme et plusours autres en pays. Touz firent defaute forprise le baroun et sa femme qe alleggerent[3] une recoverir en barre dassise. Et le recorde fut dedit; sour quei les parties furent ajournes en Baunc pur ceo qe le recorde fuit allegge illoeqes; a quel jour le baroun fist defaut.—*Parn.* Ils ount failli de lour recorde, par quei nous prioms seisine.—*Stouf.*[4] Vous avez cy la femme qe prie destre resceu.—*Parn.* Ceo ne put estre, qar ceo serroit qele se escusereit de la disseisine de quele ele est atteint par estatut, qest un jugement.—*Non obstante* ele fut resceu. Et donqes ele voucha un autre de parcelle qe fut nome, et prest fut de garrantir.[5]—*Pole.* Il est hors de Court, qar par sa defaute lassise est agarde, et autre ne serra resceu en ceo bref de garrantir forsqe celuy qest partie, qar proces ne se fra pas vers vouche icy.—*Non obstante* il fut resceu de garrantir, et pleda en barre par un recoverir sour un assise de novele disseisine vers le pleintif, et demanda jugement si assise sour assise dust estre.[6]—Et quant a remenant la femme pleda mesme en barre par un recoverir qe ele avoit[7] et soun baroun en assise de mordauncestre de la seisine un A. soun uncle vers un estraunge; et lestat le pleintif fut mesne[8] entre la mort soun auncestre[9] et soun recoverir; jugement si assise

Nota: Assisa Novæ Disseisinæ

[Fitz. *Resceit*, 143; *Voucher*, 117.]

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[1] After the word "*patriam*" occur in the MS. 16560 the words "*Resi-*" "*duum in proximo folio sequente.*" Two isolated passages which appear to relate to this case have been found in the MS., one after eight intervening cases, and one after fourteen more intervening cases. They have been printed at pages 201 and 203.

[2] This report of the case is from T., L., and 25184.

[3] L., alijia.

[4] T. Sch.

[5] 25184, dentrer.

[6] T. deit aver, instead of dust estre.

[7] T. par quel ele avoit recoveri, instead of qe ele avoit.

[8] The word mesne is in L., but not in T., nor in 25184.

[9] 25184, le pleintif, instead of soun auncestre.

A.D. 1339. *Parning* rehearsed the first bar and said:—We tell you that one S., chaplain, gave the same tenements to A., her uncle, and B. his wife, and the heirs of their bodies, and, if they died [without issue], the remainder to the now plaintiff; and we tell you that after the death of A. and B., because they died without issue, we entered in remainder, and were seised, and disseised, a long time before the disseisin which was charged in our person, and we pray the assise.—*Trewith.* By such title you cannot arrive at the assise, for that would be, in a manner, to aver the contrary of that which was found by assise; for suppose that you were seised by such a title as you say, and we ousted you, and you re-entered upon us, as would be congeable, and we brought an assise and recovered, I say that you would be put to bring the Attaint, and not to have an assise on your title.—*Parning.* I should make my election. — STONORE. It may be that the assise spoke the truth, and yet he will have an assise of a disseisin higher up, for, if he was seised by that title, and you ousted him, and enfeoffed another and he entered upon that other, he would be a disseisor, and if that disseisin were charged upon him by verdict of assise yet the first disseisin would not be purged.—SCHARSHULLE. You have still time to traverse what he has said and so to be out of the point of assise, and, if you will not, the assise at large will be awarded him as if you had pleaded nothing; and the assise has often enough been taken against such a plea in bar, where the plaintiff said nothing but that long before the disseisin that was charged upon him he was seised and disseised, without showing how.—And SCHARSHULLE said in this plea that it is a bar of assise to say:—"You disseised me, and I ousted you anew."—*Parning.* As to the other parcel with respect to which the wife has pleaded in bar we assert the same title; and we pray judgment whether [she has a good bar] by a recovery had between the time when we were disseisors and the present, which recovery must have been feigned, since her uncle on whose seisin she recovered by Mort d'Ancestor had only a fee tail; and we pray the assise. —*Stouford.* The contrary of that which you say was found upon the Assise of Mort d'Ancestor; wherefore you shall not be received. But, because the person against whom the recovery was had was a stranger, *Stouford* did not dare to demur, but said that the uncle was seised as of fee simple, without this that he had anything of the gift of the chaplain,

deive estre.[1]—*Parn.* rehercea le primer barre et dit:—Nous vous dioms qun S. chapeleyn[2] dona mesmes les tenementz a A. soun uncle, et B. sa femme, et les heirs de lour corps, et, sils deviassent, &c., le remeyndre a cesti qore se pleint; et vous dioms qe apres le deces A. et B., pur ceo qils devierent saunz issue, nous entrames en le remeindre, et seisi fumes et disseisi longe temps devant la disseisine quel fut atteint en nostre persone, et prioms lassise.—*Trewod.* Par tiel title ne poiez al assise atteindre, qar ceo serroit en maner daverer le contrarie de ceo[3] qe fut trove par assise; qar mettez qe vous fustes seisi par tiel title come vous parlez, et nous vous oustames, et vous re-entrastes sour nous, come congeable[4] chose serreit, et nous portames une assise et recoverimes, jeo dy qe vous serrez mys de porter latteint et noun pas sour vostre title daver assise.—*Parn.* Jeo elirroi.—Ston. Il poet estre qe lassise dit verite, et unqore yl avera une assise dun disseisine plus haut, qar sil fust seisi par cel title et vous luy oustastes, et feoffastes un autre, et il entra sour luy, il serroit disseisour,[5] et si cel disseisine fut atteint en luy par verdit dassise unqore ne serreit pas la primere disseisine purge. — Sch. Vous avez ore temps de traverser ceo qil ad dit et issi estre hors de point dassise, et, si vous ne voillez, home luy agardera lassise a large come[6] vous nussetz ren plede; et home ad pris assise assez sovent countre tiel ple en[7] barre, ou le pleintif[8] dit rein mes qe longe temps avant cel disseisine qe fut ateint en luy il fut seisi et disseisi, saunz moustrer coment. Et Sch. dit en ceo ple qil est barre dassise, Vous me disseisistes et frechement vous ostai.[9]—*Parn.* Quant a lautre parcel qe la feme ad plede en barre nous voloms mesme le title; et demandoms jugement si par recoverir fait entre nous disseisours qe fut feint[10] del hour qe son uncle navoit qe fee taille de qi seisine ele recoverit par mordauncestre; et prioms lassise.—*Stouf.* Le contrarie de vostre dit fut trove en lassise de mordauncestre; par quei vous ne serrez resceu. Mes, pur ceo [qil fut estraunge, *Stouf.* nosa demorer, mes dit qe le uncle fut seisi come de fee simple saunz ceo][11] qil avoit rien del doun de chapeleyn

A.D. 1339.

[Fitz. *Title*, 6.]

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[1] T. aver.

[2] T. Chacl.

[3] The words de ceo are in L., but not in T. nor in 25184.

[4] T. conable.

[5] L. disseisine.

[6] L. coment.

[7] The words plee en are not in 25184.

[8] L. ple.

[9] L. estoi.

[10] L. fet.

[11] The words between brackets are in L. and T., but not in 25184.

A.D. 1339. as she supposed; ready &c.—And the other side said the contrary.—*Stouford.* As to the other parcel we tell you, as before, that A. and B. his wife never had anything of the gift of the chaplain; ready &c.—*Parning.* That is not an issue in this case, if you do not show how you had title, so that it would be lawful for you to oust us, for, if we were seised otherwise than by disseisin and you ousted us where you had no right to do so, we should recover against you upon that possession, by assise; and by the manner of your plea it must be taken that our former seisin is not denied by you, else it would follow that the assise might be taken out of the point of assise to enquire of the title, and afterwards at large upon the seisin and disseisin, which could not be.—*Trewith.* If your title be found, the seisin will be held as not denied, and not before; for, if it be found for you, you will have the assise in respect of damages, and if not you will take nothing; and there is no better plea in the whole world, when a party in an assise is put to make a certain title whereupon to have assise, than to traverse the title; and that we have done, and it shall never be understood that you were seised by other title than that which you have yourself made, nor shall you have advantage of any other.

SCHARSHULLE. When a party makes himself a title in certain, of his own accord, where there was no need that he should have done so, the title is not traversable, for, if it be found that he was seised by another title, seisin will be awarded him; and so the matter stands in this case, for it would have been sufficient for him to have said that he was seised and disseised long before &c., without showing how; wherefore the manner in which that happens is not traversable; but if he made a title in certain because the law compelled him, the title would have to be traversed. But not so here. Wherefore you are already upon the assise, as we understand the matter, for we shall enquire

come ele supposa; prest &c.—*Et alii e contra.*—*Stouf.*[1] Quant al autre parcel vous dioms, come[2] avant, qe A. et B. sa feme navoient unqes reins del doun del chapeleyn; prest &c.—*Parn.* Ceo nest pas issue en ceo cas, si vous ne moustrez coment vous aviez title[3] issi qe lirreit a vous de nous[4] ouster, qar, si nous fumes seisi forsqe par disseisine et vous nous[5] oustastes la ou vous naviez pas de resoun, nous recoverioms de cel possession vers vous par assise; et par la manere de vostre plee il covent qe nostre[6] seisine[7] a devant seit tenue a nient dedit de vous, ou autrement ensuereit qe home prendreit[8] lassise hors de point dassise denquere del title, et puis sour la seisine etdis seisine a large, qe ne put estre.—*Tr.* Si trove seit vostre title home le tendra a nient dedit, et avant ne mye; qar si trove seit pur vous, lassise de damages, et si noun vous ne prendrez rien; et il ny ad meillour plee par my tout[9] le mounde, quant partie en assise est mys de fere title certein sour quei aver[10] assise, qe de traverser le title; et ceo avoms nous fet, et home nentendra james qe vous fuistes seisi par autre title qe[11] vous navez mesme fet ne de autre averez avantage. A.D. 1339.

Sch. Quant partie se fait title en certein de soun gre, ou il ne bosoignera pas qil ust fait, le title nest pas traversable, qar, si trove soit qil fut seisi par autre title, home lagardera seisine;[12] et auxi est il en ceo cas, qar il ust este assez a luy daver dit qil fut seisi et disseisi longe temps[13] avant &c., saunz moustrer coment; par quei la manere coment il avent nest pas traversable; mes, si par force de lei il se freit title en certein, la averoit home traverser a title. *Sed non sic*[14] *hic.* Par quei vous estes a lassise a ceo qe nous entendoms pardejea,[15] qar nous enquerroms

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[1] 25184, et.

[2] L. qe quant.

[3] title is not in L.

[4] T. lui.

[5] L. me.

[6] L. vostre.

[7] 25184, disseisine.

[8] T. prendra; L. averait.

[9] tout is in T., but not in L., nor in 25184.

[10] T. par qei avera, instead of sour quei aver.

[11] T. et.

[12] L. lassise.

[13] temps is not in T.

[14] *sic* is not in L.

[15] L. par ceo.

A.D. 1339. whether he was seised and disseised before the recovery by those who are named &c. And as to the other parcel you are at issue upon the title, and, if his title be found, we shall enquire of the ouster and not of the seisin, for by the plea that is admitted. Wherefore we are at issue.

Stouford. You have heard how he has made his title, of a time precedent to our recovery, by force of the remainder settled upon him :—to wit that one S., chaplain, gave the land to a man and his wife in fee tail, &c., and that afterwards the land was to remain to the present plaintiff, and that so he was seised as above. To this we say that the husband and the wife never had anything of the gift of the chaplain, &c. —*Parning.* That is not an issue, for we have shown title for ourselves, and that by force of a remainder, and he shows no right on his side; for let us suppose that I disseise a man; another comes and disseises me; I bring the assise against him, and he pleads in bar, and I make myself a title; he shall not have a plea to bar me unless he can show some title to justify his possession. — *Stouford.* You have made a title, and we have traversed it; wherefore that is sufficient. — *Parning.* If the younger son brings an assise against the elder son, it is no plea to say :—"I am the elder son and you the younger; "judgment whether you ought to have the assise"; but it is absolutely necessary that he show his possession to be by very title, that is to say by succession to the inheritances.—*Trewith.* In the case you put, if the elder son pleads in bar that he entered after the death of his father, and that the younger son ousted him, and that he re-entered, and prays judgment, and if the younger son makes himself a title and says that one J. was seised of the land and enfeoffed him, and so he was seised until disseised by the elder, it is a good plea to say that the younger never had anything of J.'s feoffment; so also in this case.—Basset. The ground of his title here is as well because he was seised by force of the remainder as because of the feoffment of the chaplain; wherefore without traversing the title there is no issue.—*Stouford.* We are now out of the point of assise. — Schardelowe. What you say is true, for if the feoffment be found *Parning* has attained his purpose, and if not you have attained yours. And *Parning's* meaning was that, even though his title should be found by virtue of another person's feoffment, he would have the assise upon it in respect of damages. And afterwards the issue was taken upon the feoffment of the chaplain, &c.

[sil fut seisi et disseisi avant le recoverir par ceux qe sount nomes &c. Et quant a lautre parcel vous estez a issue sour le title, et si trove seit soun title nous enquerroms][1] del hoster et noun pas de la seisine, qar par plee ele est conu. Par quei nous sumes a issue. A.D. 1339.

Stouford.[2] Vous avez entendu coment il se ad fait title deyne temps qe nostre recoverir par force del remeindre taille a luy, saver qun S. chapelein dona la terre a un homme et sa femme en fee taille &c., et apres qe la terre remeindreit a cestuy qe ce pleint, issint fut il seisi *ut supra.* A ceo dioms nous qe le baroun et la femme navoient unqes rien del doun le chaplein &c. — *Par.* Ceo nest point issu, qar nous avoms moustre title pur nous et par fource dune remeindre, et il moustre nul dreit en luy; qar mettoms qe jeo disseise un homme; un altre vint et moy disseise; jeo porte lassise vers luy et il plede en barre, et jeo me face title; il navera plee de me barrer saunz ceo qe il pusse mostrer asqune title qe mettent sa possession. — *Stouf.* Vous avez fait title et ceo avoms traverse; par quei ceo suffist.—*Parn.* Si le fitz pusne porte assise vers le fitz eysne il nest pas plee a dire jeo sue fitz eyne et vous pusne—jugement si vous devez lassise aver—mais il covient aforce qe il moustre possession par verrey title, saver par succession des heritages.—*Trew.* En vostre cas si le fitz eysne plede en barre qe il entra apres la mort son piere, et le fitz peune luy ousta, et il entra—jugement—et le fitz pune se fet title et dit qun J. fut seisi de la terre et luy enfeffa, issi feut il seisi taunqe par luy disseisi, il est bon plee a dire qe il navoit unqes rien de son feffement, auxi icy. — Bass. La cause de son title si est auxi bien de ceo qe il fut seisi par force del remeindre com le feffement le chapeleyn; par quei saunz traverser title il nest pas issu. — *Stouf.* Nous sumes ore hors de point dassise. — Schd. Vous ditez verite, qar si trove soit le feffement *Parn.* est a soun purpos, et si noun vous estes al vostre. Et lentencion *Par.* fut, mes qe son title soit trove par altri feffement, unqore il navera lassise en dreit des damages. Et pus lissu fut pris sour le feffement le chapleyn, &c.

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[1] The words between brackets are not in T.

[2] MS. Ston. This (from 16560 alone) is the first of the isolated passages mentioned at p. 195.

A.D. 1339. As to what *Stouford* said that the defendant never had anything of the gift of the chaplain, SCHARSHULLE said the assise must necessarily be taken at large, for it would have been sufficient to have said that before this time he was seised and disseised, without having shown how; and, even though he show how, you shall not have a traverse; for if I plead in bar by reason of your own deed, and you make title of your own accord I shall not have a traverse to that. — And the opinion of the whole COURT, except SCHARDELOWE and SCOT, was that it was a good plea to say that he was seised and disseised, without showing how.

Quare Impedit. (13.) § J. de C. brought a *Quare impedit* against J. de W., &c. At the return of the Grand Distress the parties came into Court and took a *Prece Partium;* and on the day the defendants did not come. It was asked of HILLARY and *Mallum* whether the plaintiff should have a writ to the Bishop; they said that he should have only a Distress.

Note. § *Quare impedit.* The Defendant came upon the grand distress; and on that day the parties took a day *prece partium,* and on the latter day the defendant did not come; and a new distress was awarded, and not a writ to the Bishop.

Note. (14.) § Note that a writ was sent to the Bishop of Lincoln to certify the Court respecting bastardy; and, because the Bishop was out of England, his Vicar General certified the Court of the legitimacy; but because the certificate did not come in the name of the Bishop himself, the certificate was not received, notwithstanding the absence of the Bishop.

Dower. (15.) § Dower against a woman for the third part of five marks of rent. The woman against whom, &c., came, and answered as tenant of the rent, and vouched

Qaunt[1] a ceo qe il dit qe il navoit rien del feffement le chapleyn, SCH. il covent a force qe lassise soit pris a large, qar il eust este assez davoir dit qe devaunt cel temps il fut seisi et disseisi, saunz avoir moustre coment; et, mesqe il moustre coment, vous naverez mye travers a ceo, qar si jeo plede en barre par vostre fait demene, et vous facez title de gree jeo navera mye travers a ceo. Et opinion de tut le COURT feut qe il est bon plee[2] a dire qe il feut seisi et disseisi, saunz moustre coment, forspris SCHRD. et SCOT. A.D. 1339.

(13.)[3] § J. de C. porta *Quare impedit* vers J. de W. &c. A la graunt destresse retourne les parties viendrent en Court et pristrent un *Prece Partium*, a quel jour il ne viendrent pas. Demande fut de HILL. et de *Mal.* sil avereit bref al Evesqe; ils diseient qil navereit mes un destresse. Quare Impedit.

§ *Quare*[4] *impedit.* Le defendant vynt par la grante destresse, a quel jour les parties pristrent jour par *prece partium*, a quel jour le defendant ne vynt pas, et fut agarde novel destresse, et noun pas[5] bref al Evesque. Nota. [Fitz. *Briefe al Evesque*, 19.]

(14.)[6] § Nota qe bref fut maunde al Evesque de Nichole de certifier la Court de bastardie; et, pur ceo qe Levesque fut hors Dengleterre, soun Viker General certifia la Court de la legitimacion; mes, pur ceo qe la certificacion ne vynt pas en noun[7] del Evesque mesme, la certificacion ne fut pas[8] resceu, *non obstante absentia Episcopi.* Nota. [Fitz. *Certificat*, 6.]

(15.)[9] § Dowere vers une femme de la terce partie de v. marcs de rente. La femme vers qi &c. vynt et respondi come tenant de la rente[10] et voucha &c., et Dowere. [Fitz. *Resceit*, 144.]

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[1] This (from 16560 alone) is the second of the isolated passages mentioned at p. 195.

[2] MS. title.

[3] From 16560 alone as far as the point at which the larger type ends.

[4] This note is from T., L., and 25184.

[5] 25184, puis instead of noun pas.

[6] From T., L., and 25184. This note bears a strong resemblance to No. 4 of Michaelmas term 12 Edw. 3 (from 16560 and 25184), though there are some variations. Fitzherbert, however, has made the two notes distinct, placing one in succession to the other.

[7] The words en noun are not in 25184.

[8] 25184, fut, instead of ne fut pas.

[9] From T., L., and 25184 as far as the point at which the larger type ends.

[10] 25184, terre, &c.

A.D. 1339. &c., and afterwards made default. The Petit *Cape* issued, and on the day she did not come. — *Kelshulle.* This woman against whom the writ is brought and her husband purchased the tenements, from which the rent is supposed to arise, to them and to the heirs of the husband; and you have here A., heir of the husband, who prays to be received.—*Pole.* You do not pray to be received in respect of the rent which would have to be lost; besides, she against whom our writ is brought has accepted tenancy of the rent; wherefore you shall not be received.—*Kelshulle.* If we are received we shall be warranted in respect of the land, wherefore &c.; and you will find by the record that she answered as tenant of the land &c.—And it appeared to the COURT that, whether it was one or the other, he should be received. Wherefore he was received, and said that her husband was never seised so that he could endow her; ready &c.—And the other side said the contrary &c.

Dower. § A writ of Dower was brought against a tenant for ten shillings of rent. She answered as tenant of the rent, and vouched to warranty; and afterwards the vouchee made default, and the tenant also. — *Kelshulle.* You have here one J. who tells you that his father and she who has made default purchased the land out of which the rent is issuing, to them and to the heirs of his father, and through her default he prays to be received to defend his right to the land. — *Pole.* You see clearly how he prays to be received in respect of something different from that which is in demand; wherefore he shall not be received; and also she against whom we have brought our writ answers as tenant of the rent, and vouches to warranty, wherefore to be received in respect of a matter other than that which she has pleaded, &c.—*Kelshulle.* As to the first point, in case I demand rent against you, you can vouch to warranty in respect of the land; so also here; and, as to the other exception, although she answered as tenant of the rent, still we shall be received in respect of the land, and thereupon we will abide judgment; wherefore it is as we have said. And afterwards he was received &c.

Heirs vouched. (16.) § A writ was brought against a tenant. He vouched to warranty one W. son and heir of J., as

puis fist defaute. Petit *Cape* issit, a quel jour ele ne vynt pas.—*Kels.* Cele feme vers qi le bref est porte et son baron purchacerent les tenementz, dount la rente est suppose sourdaunt, a eux et a les heirs le baron; [et vous avez cy A. heir le baron][1] qe[2] prie destre resceu.—*Pole.* Vous ne priez[3] pas estre resceu de la rente [qe dust estre perdue; ovesque ceo, celui vers qi nostre bref est porte ad accepte tenaunce de la rente];[4] par quei vous ne serrez resceu.—*Kels.* Si nous serroms resceu nous serroms garranti de la terre, par quei &c.; et vous troverez par recorde quele respondi come tenaunt de la terre &c. Et sembloit a la COURT, le quel ceo fut lun[5] ou lautre, qil serroit resceu. [Par quei il fut resceu],[4] et dit qe soun baroun ne fut unqes seisi si[6] qe dower la poet; prest, &c.—*Et alii e contra* &c. A.D. 1339.

§ Bref[7] de Dower fut porte vers un tenaunt de x. *s.* de rente. Il respondi com tenaunt de la rente, et voucha a garraunt; et pus le vouche fit defaute et le tenaunt.—*Kels.* Vous avez ci un J. qe vous dit qe son piere et celui qi ad fait defaute purchacerent la terre dount la rente est issaunt a eux et a les heirs son piere, et par la defaute cely il prie destre resceu a defendre son dreit de la terre.—*Pole.* Vous veiez bien coment il prie destre resceu dautre chose qe nest en demande; par quei il ne serra resceu; et aussint cely vers qi nous avoms porte nostre bref il respond com tenaunt de la rente, et vouche a garraunt, par quei destre resceu dautre chose qe il nad plede &c.—*Kels.* Qaunt al primer point, la ou jeo demande vers vous rente vous poez voucher a garraunt de la terre, aussi ici; et qaunt al altre chalenge mes qil respondi com tenaunt de la rente uncore nous serroms resceu de la terre, et sour ceo nous voloms demorer en jugement; par quei il est issi coment nous avoms dit. Et puis il fut resceu &c. Dower.

(16.)[8] § Bref fut porte vers tenaunt. Il voucha a garraunt un W., fitz et heir J., come heir a la comune [Heir]es vouches.

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[1] The words between brackets are not in T.

[2] T. et.

[3] T. poez.

[4] The words between brackets are in L. and T., but not in 25184.

[5] L. luy.

[6] si is not in L.

[7] This report of the case is from 16560 alone.

[8] From 16560 alone as far as the point at which the larger type ends.

A.D. 1339. heir at common law, and one B., son and heir of J., by reason of the custom of the country. Process was made against them; and the Sheriff returned that he who was vouched as heir at common law had nothing; and with respect to the other he returned that he had taken into the King's hand in accordance with the proportion in which the heir was liable.—SCHARDELOWE. The Sheriff's warrant is simply to take to the value of the whole from him who has it. Wherefore an *Alias* writ was awarded, and the Sheriff was amerced &c.

Dower. § Dower where the heir of the husband in chivalry, and the same heir and his brothers [as heirs] by reason of socage were vouched. And they made default, wherefore the *Cape ad valentiam* issued. Whereupon the sheriff returned that the heir in chivalry had nothing, but that the others who were heirs in socage had something, of which socage-holding he had taken according to the proportion. And because the sheriff could not apportion &c., of himself, without having a warrant, and he had not one, he was amerced, and an *alias* writ issued.

Note. (17.) § Note that one can recover to the value only in the counties in which one vouches, except after descent or purchase subsequent to the warranty.

Replevin. (18.) § J. de C. complained that W. B. tortiously took his cattle.—*Rokell.* A commoner and freeholder of the vill of C. avows for *damage feasant* inasmuch as the vill of C. and the vill of B. do not intercommon.—*Kelshulle.* The vills do intercommon in the field in which the taking was, and have intercommoned from time whereof memory is not.—*Rokell.* Since you do not say that the vills intercommon you shall not be received to say that they intercommon in a particular field.—And aftewards *Kelshulle* said that the vills intercommon and have intercommoned from time whereof there is no memory; ready &c.—And the other side said the contrary.

ley, et un B., fitz et heir J., par resoun de les usages de pays. Proces fut fet vers eux, et le Vicounte retourna qe celuy qe fut vouche come heir a la comune ley naveit riens, et pur lautre il retourna qe il prist en la mayn le Roy soloun ceo qe affert a la porcion. —Sch. Le garraunt le Vicounte nest nul altre mes de prendre a la value de tut de celuy qe ad. Par quei un *sicut alias* fut agarde et le Vicounte amercie, &c. A.D. 1339.

§ Dowere[1] ou le heir le baroun en chivalerie et mesme leir et ses frerez par resoun de socage furent vouches qe firent defaute, par qei *Cape ad valentiam* issit, par qei le Vicounte retourna qe le heir en chivalerie navoit[2] rein, mes les autres en socage avoint de qi[3] il avoit pris solom la porcion. Et pur ceo qe le vicounte ne poet aporcioner[4] &c. de luy mesme saunz garrant aver, et ceo navoit il pas, par quei il fut amercie et *sicut alias* issit. Dowere. [Fitz. *Retourne del Vicount*, 93.]

(17.)[5] § *Nota* qe home ne recovera pas a la value fors en les countes ou il vouche [sil ne soit descendu ou purchace de puyne temps].[6] Nota.

(18.)[7] § J. de C. se pleint qe W. B. atort prist ses avers.—*Rokel.* Avowa comuner et fraunk tenaunt de la ville de C. damage fesaunt par taunt qe la ville de C. et la ville de B. ne se entrecomunent pas.—*Kels.* Les villes entrecomunent en le champ[8] ou la prise se fist, et ount entrecomune de temps dount memore nest.—*Rokel.* Del houre qe vous ne ditez mye qe les villes entrecomunent par quei a dire qe il entrecomunent en le champ vous ne serrez mye resceu. Et pus *Kels.* dit qe les villes entrecomunent et ount entrecomune de temps dount ny ad memore; prest &c.—*Et alii e contra.* Replegiari.

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[1] This report of the case is from T., L., and 25184.

[2] L. quiavoit.

[3] T. par quei instead of de qi.

[4] L. parcioner.

[5] From T., L., and 25184.

[6] The words between brackets are in T., but not in L., nor in 25184.

[7] From 16560 alone as far as the point at which the larger type ends.

[8] MS. la ville.

A.D. 1339. Avowry for a commoner in another vill.

§ Avowry by a commoner for *damage feasant* because the plaintiff, who was resident in another vill, put his beasts to common there, &c., when the two vills did not intercommon.—*Kelshulle.* We, and our ancestors, and those whose estate we have, have taken common there, from time whereof memory is not, as appendant to the freehold which we hold; ready &c.—*Rokell.* You shall not be received to that without answering whether the vills intercommon or not.—This was not allowed.—Wherefore the issue was taken:—not seised from all time.

Account.

(19.) § A Writ of Account was brought. The Sheriff returned that the defendant was not found; and the plaintiff was essoined, and the defendant proffered himself, ready to answer.—HILLARY ordered that the essoin should be adjourned, and that the same day should be given to the defendant, and that the latter should go without mainprise &c.

Nuisance.

(20.) § Nuisance of a Market, which William de Clinton and Juliana his wife brought against Oliver le Gros, on the ground that he had tortiously set up a market in Worsted to the nuisance of their free market in Sutton, since the first passage &c.:—and tortiously because—whereas the said William, and Juliana his wife, as of the right of the wife, had their market on Tuesdays in Sutton, to which market the people of the country round about were wont to come and sell and buy cattle and corn, wares and merchandise (that is to say oxen and

§ Avowerie[1] par comuner pur damage fesaunt pur ceo qe la pleintif, qe est resceaunt deinz un autre ville, mist ses bestes pur comoner illoqes &c. ou les ij. villes[2] nentrecomunent pas. — *Kels.*[3] Nous, et nos auncestres, et ceux qi estat nous avoms, avoms comune illoqes de temps dount memorie nest, come appendant al franctenement qe nous tenoms; prest &c. — *Rokel.*[4] Vous ne serrez pas resceu saunz respoundre si les villes entrecomunent ou nient. — *Non allocatur.* — Par quei lissu fut pris[5] qe nent seisi de tut temps. A.D. 1339. Avowrie pur comuner en autre ville.

(19.)[6] § Bref dacompte fut porte. Le[7] Vicounte retourna qe le defendant ne fut pas trove; et le pleintif fuit essone, et le defendant se profri[8] prest a respondre. — HIL. comaunda dajourner lessone et doner mesme le jour[9] al defendant, et qil alast saunz meynprise, &c. Acompte.

(20.)[10] § Nusaunce de marche, qe William de Clintone[11] et Juliane sa femme[12] porterent vers Oliver le Gros,[13] qe atort avoit leve marche en Worstede[14] a nusaunce de lour fraunc marche en Suttone[15] puis le primer passage &c. :—et pur ceo atort qe, la ou les ditz W. et J. sa femme,[16] come de dreit la femme, avoient lour marche par jour de Mardi[17] en S., a quel marche les gens du pays environ soleint venir et vendre et achater chateux [et blees, merces et marchaundises, saver Nocumentum.

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[1] This report of the case (which appears to be the same though the issue is differently stated) is from T., L., and 25184.

[2] villes is not in T.

[3] *Kels.* is not in L.

[4] T. and L. *Kels.*

[5] T. and L., *Rok.*, prist lissue, instead of lissu fut pris.

[6] From T., L., 16560, and 25184.

[7] So in 16560. In the other MSS. the report begins :—Acompte ou le.

[8] 16560, vynt, instead of se profri.

[9] 16560, *idem dies*, instead of mesme le jour.

[10] From T., L., 16560, and 25184, corrected by the record (*Placita de Banco*, Easter, 13 Edw. 3, R°. 112).

[11] L. Olintone.

[12] 25184, C. sa femme; T., L., and 16560, sa femme, instead of Juliane sa femme.

[13] From the record; MSS. A.

[14] T., Wordstod; 16560, West.

[15] T. Sortone.

[16] 16560, A. sa femme; T., L., and 25184, sa femme, instead of J. sa femme.

[17] 16560 and 25184, Mesquerdi.

A.D. 1339. other cattle, wheat, barley, and other kind of corn, silk and sendal and other kinds of wares and merchandise) in respect of which the aforesaid W. and his wife took toll and the letting of stalls—this same Oliver has set up a market at Worsted, to hold on the same day, Tuesday, at a distance of only two miles from Sutton, by reason whereof the people of the country who were wont to come to their market now come to that market and there pay toll &c., wherefore they have often prayed &c.; thus has he set it up by way of nuisance, and tortiously, and to their damage, &c. — *Pole* defended the wrong, and force &c., and the damage. — *Rokell.* Judgment of the count, for they have not said that their market was prior to ours &c. — HILLARY. Plead over, for that will come by way of answer. — *Rokell.* Judgment of the writ, for William, who brings this writ, is Earl of Huntingdon; he is not named Earl; judgment of the writ. —SCHARDELOWE. At the time when the writ was purchased he was not Earl; besides, he demands as of the right of his wife, and not of his Earldom; wherefore answer. — *Rokell.* We demand the view both of the one market and of the other.—SCHARDELOWE. This is not a nuisance to a freehold, and you know whether you have a market yourself or not.—*Rokell.* By the view we shall know what estate they have in their market, that is to say whether jointly or otherwise, or whether the two

boefs et autres chateux, furment, orge, et autre manere de bleez, say et sendal et autres manere de merces et marchaundises, de qi les avantdits W. et sa femme pristrent][1] tolun[2] et luage destalles — la ad mesme celuy Oliver[3] leve une marche a W. a tenir par mesme le jour de Mardy,[4] fors a deux lieux de S., par quei les gentz du pays qe soleient venir a lour marche venent a cele marche et illoques fount tolun[5] &c., par qei ils ount sovent prie &c.; issi lad il leve a nusaunce atort et a lour damages &c.—*Pole* defendi tort et force, &c., et les damages. — *Rokell.* Jugement de counte, qar ils nount pas dit qe lour marche fut eigne qe nostre, &c.—[HILL. Dites outre, qar[6] ceo vendra par voie de response.][7] — *Rok.* Jugement de bref, qar W., qe porte ceste bref, est Counte de Huntyngdone; nent nome Counte; jugement de bref. — SCHD. Au temps du bref purchace il ne fuit pas Counte; ovesque ceo, il demande come de dreit sa femme, et noun pas de sa Counte; par quei responez. — *Rokell.* Nous demandoms la vewe de lun marche et de lautre. — SCHD. Ceo nest pas nusaunce a fraunc tenement et vous conussez si[8] vous avetz marche mesmes [ou ne mye].[9]—*Rok.* [Par la vewe][10] saveroms nous quel estat ils ount en lour marche, cest a saver joyntement ou autrement, ou si les ij. villes soient si pres ensemble

A.D. 1339.

[Fitz. *Briefe*, 259.]

[Fitz. *View*, 101.]

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[1] For the passage between brackets are substituted in 16560 the words:—et myst en certein de qi W. et sa femme com del dreit sa femme avoient. The words in the record are:—quascunque mercandizas scilicet boves et vaccas, oves, et alia animalia, frumentum, siliginem, et alia blada, sericum, cindonem, et alias mercandizas, unde ipsi W. et J. habere solebant tolnetum, et proficuum pro stallis in eodem mercato locatis.

[2] T., comunes; L., touz. The following word "et" is in 16560 alone.

[3] From the record; MSS. A.

[4] 25184, Mekerdi.

[5] L. commerce.

[6] T. qar si.

[7] The passage between brackets is not in 16560.

[8] 16560, countez qe, instead of conussez si.

[9] The words between brackets are in T., but not in any of the other MSS.

[10] The words between brackets are not in T.

A.D. 1339. towns are so near together that the distance or proximity is a cause of nuisance. — HILLARY. You shall not be apprised of this by the view; wherefore answer. — *Rokell.* He has counted that they have their free market as of the right of the wife, whereas we say that the wife has only a term for life in that market; judgment of the count. — SCHARDELOWE. You have demanded the view, wherefore the count is affirmed good, and even though you had taken exception to it before, the exception would have been of little value.—*Rokell.* If I had taken that exception at first, I should not then have had the view afterwards; and upon this matter he ought to have counted differently. And afterwards *Rokell* said that he had not set up any market to the nuisance of their market; ready &c. — *Kelshulle.* This issue is double, as the meaning may be either that you have not set up a market, or that you have set one up, but not so as to be a nuisance.— SCHARDELOWE. He has given you a proper issue upon this writ, for in an assise of nuisance it is a proper issue to say, "I have not set up any nuisance to your "freehold;" and it is of the same nature though it be pleaded in this case.—*Trewith.* That is no wonder, for in an assise, if the party say nothing, enquiry will be made by the Assise.—SCHARDELOWE. In nuisance of a wall before the Sheriff it would be the natural issue.—And afterwards the averment was received.

qar la loyntesse[1] ou la procheinte est cause de la nusaunce. — [HILL. Vous ne serrez pas apris de ceo par la vewe; par quei responez. — *Rok.* Il ad counte qils ount lour fraunc marche][2] come de dreit sa feme; [la dioms nous qe la feme][3] nad qe terme de vie en cel marche; jugement de counte.—SCHD.[4] Vous avetz demande la vewe,[5] par quei le counte est afferme bon,[6] et coment qe vous lussetz chalange devant il ne serroit fors de petit value.—*Rok.* Si jeo usse done ceste excepcion adeprimes, jeo nusse ja eu la vewe apres; et sour sa matere il dust aver autre counte. Et puis *Rok.* dist qil navoit leve nul marche a nusaunce de soun marche; prest &c.—*Kels.*[7] Cest issue est double, ou pur ceo qe vous navez leve nul marche, ou pur ceo qe vous avez leve un, mes nent a nusaunce.— SCH. Il vous ad done propre issue en ceo bref, qar en assise de nusaunce cest propre issue :—Jeo nai leve nul nusaunce a vostre fraunc tenement; et cest de mesme la nature coment qil soit plede icy.—*Tr.* Nes pas merveile, qar en assise, si partie die rien, ceo serra enquis par assise. — SCH. En nusaunce de mure devaunt le Vicounte il serroit naturel issue.—Et pui laverement fut resceu.

A.D. 1339.

[Fitz. *Issue*, 27.]

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[1] L., lountesce; 25184, jointesse; 16560, longesse.

[2] For the passage between brackets is substituted in 16560 the following: — *Trew.* De vostre tort demene vous naverez mye la vewe. Et feut ouste, &c.—*Rokel.* Il ad counte qe W. et sa femme feurent seisiz des profits.

[3] For the words between brackets the word qe is substituted in L.

[4] 16560, *Pole.*

[5] In 16560 the case concludes thus :—et od ceo, si bref soit porte vers un homme et sa femme et la femme nad qe terme de vie, et le baron fet defaute, la femme serra resceu a defendre soun dreit, et par tiele paroule deit ele priere etc. Et feut ouste. Et pus *Rokel* dit qe il navoit leve nul marche a nusaunce a lour marche.—*Geyn.* Vostre issue est double. Et puis lissue fut pris &c.

[6] bon is not in T. nor in 25184.

[7] T. and L., *Rok.*

A.D. 1339. Avowry.

(21.) § An Abbot avowed upon his very tenant and alleged the seisin through his own hand. — *Rokell.* We do not hold of him, nor claim to hold of him, and we pray our damages and judgment how we ought to depart. And the plaint was in respect of a horse; and the parties both on the one side and on the other appeared by attorney.—ALDEBURGH adjudged that the plaintiff should go quit, and should recover his damages taxed by the COURT at ten shillings. And the avowant was in mercy.

Avowry.

§ A man avowed upon J. because J. held of him by certain services. And J. disclaimed holding of him. And both the plaintiff and the avowant appeared by attorney. Wherefore it was adjudged that the plaintiff should recover his damages &c.

Avowry.

(22.) § Avowry upon presentment in a Court Leet. And the avowant showed how he and his ancestors were seised of the Leet as appendant to their manor of Laxton from all time, and of the presentment of things presentable &c., until the third year of the King that now is, when, before HERLE, JUSTICE IN EYRE, the Leet was seized into the hand of the King &c. and was extended at five shillings, and arrented, and leased to the avowant at the will of the King, yielding &c. Because it was presented that the plaintiff had brewed &c. contrary to the assise, he was amerced, and affeered at sixpence, for which the defendant avowed in the same place as in parcel of the manor in which he had the Leet. —*Pole* showed that the avowant's ancestor [1] was seised of the manor within which he claimed the view [of frankpledge], and of other lands, and died, and that, after his

[1] John de Lexington, according to the record.

(21.)[1] § Un Abbe avowa sour soun veroy tenaunt et lya seisine par my sa mayn demene.—*Rokel.* Nous ne tenoms pas de luy ne clamoms de luy tenir, et prioms noz damages et jugement[2] coment nous devoms departir. Et la pleinte fuit dun cheval, et les parties dun parte[3] et dautre furent par attourne.—ALD. agarda qe la plaintif ala quites et recoverist ces damages taxes par la COURT a x. *s.* Et lavowant en la mercie. A.D. 1339. Avowrie.

§ Un[4] homme avowa sour J. pur ceo qe il tient de luy par certeinz services, et il desclama a tenir de luy. Et le pleintif et lavowant furent par attourne. Par quei fut agarde qe le pleintif recoverist ses damages, &c. Avowerie.

(22.)[5] § Avowerie pur presentement en lete. Et moustra coment luy et ces auncestres furent seisiz de la lete de tut temps [come appendaunt a soun manoir de Laxtone, et][6] de presentment choses presentables &c., tanqe la terce an le Roi qe ore est, qe devaunt HERLE, JUSTICE ERRAUNT, la lete fut seisi en la mayn le Roi, &c., et fut extendu a v. *s.*, et arente, et lesse a le avowant a le volunte le Roi, rendaunt &c. Pur ceo qe presente fuit qe le pleintif avoit brace &c. countre lassise, il fut amercie, et affeure[7] a vj. *d.* pur queux il avowa en mesme le lieu come en parcel de manoir en quelę il ad la lete.—*Pole*[8] moustra qe launcestre lavowaunt fut seisi de mesme le manoir deinz quele il cleyma la vewe, et des autres terres, et Avowrie. [Fitz. *Lete et Hundred*, 7.]

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[1] From T., L., and 25184 as far as the point at which the larger type ends.

[2] jugement is not in T.

[3] parte is not in T.

[4] This report of the case is from 16560 alone.

[5] From T., L., 16560, and 25184, as far as the word "lete" preceding the word *Pole.* The defendants in this cause were (according to the *Placita de Banco*, Easter, 13 Edw. 3) Adam de Everingham, the elder, of Laxton, and Richard Gretworde, of Laxton. There were several similar actions brought by different parties. *See* R° 2. d.; R° 69; and R° 69. d.

[6] The words between brackets are not in 16560.

[7] 25184, affere; T., furent; L., assure.

[8] Hence to the point at which the larger type ends from 16560 alone.

A.D. 1339. death, the descent was to two daughters, and that a moiety of the manor was allotted as the purparty of one, &c., and that he had a Leet, within which Leet the plaintiff was resiant, and not within the avowant's Leet; judgment &c.—*Parning.* You have heard how we have said that we have a Leet (which he has admitted) appendant to our manor (as above), which shall be understood to be throughout the whole and every part; and we tell you that what he calls a manor is nothing but two messuages and two carucates of land which are held of our manor; judgment whether he shall be received to say that he is resiant within another person's Leet; and we pray the Return.—*Pole.* We and our ancestors have been resiant within the view of that other person, which he does not deny; judgment; and we pray our damages. — SCHARDELOWE. If you will say that he is resiant &c. in a manor in which you have a Leet, without this that he is resiant in the other's manor, and take the issue in that way, we will receive it willingly.—*Parning.* By the plea which we have pleaded it must necessarily be held as not denied that we have a Leet, and that Leet throughout the whole and every part of the manor; and we have said that the manor of which you speak is nothing but certain tenements which are held of the manor, and consequently within our Leet, wherefore to limit my issue by saying "without this that "he is resiant in the other's manor and in the other's Leet" would be useless; for, in an assise, if you plead "Out of my fee," I shall say "Within my fee" and not "without this that it is out of my fee." — STONORE. It may be that you have a Leet which has existed before the time of memory, and that the other has attached a Leet to himself, and in such manner has used it from all time; wherefore you must answer him as to whether he has a Leet or not. — *Parning.* It is sufficient for us to maintain our avowry; and we demand judgment since he has admitted that we have

morust, apres qi mort descente a ij. filles, et la moyte del manoir feut allote alla purpartie lun &c., qad lete,[1] deinz quele lete nous sumes resceaunt, et nient deinz sa lete;[1] jugement &c.—*Parn.* Vous avez entendu coment nous avoms dit qe nous avoms lete,[2] quel il ad conu, a nostre manere, *ut supra,* quele serra entendu par mye et par tut; et vous dioms qe ceo qe il appel le manere ceo nest qe dieux mes et ij. carues de terre qest tenû de nostre manoir; jugement si il serra resceu a dire qe il est resceaunt deinz altri lete;[2] et prioms retourn.[3]—*Pole.* Nous et noz auncestres avoms este resceauntz deinz sa vewe, quele il ne dedist pas; jugement; et prioms nos damages:—SCH. Si vous voillez dire qe il est resceaunt &c. deinz quele manere vous avez lete, saunz ceo qe il soit resceaunt en soun manere, et par tiel voie prendre issue, nous le resceyveroms volunters.—*Parning.* Par le plee qe nous avoms plede il covent a force qe il soit tenu a nient dedit qe nous avoms lete,[1] et ceo par mye et par tut le manere; et nous avoms dit qe cel manere dount vous parlez ne sount mes certeinz tenementz qe sount tenuz del manere, et *per consequens* deinz nostre lete,[4] par quei de tailler mon issue saunz ceo qe il soit resceaunt deinz son manere et deinz sa lete il serreit en veyn; qar, en assise, si vous pledez hors de moun fee, jeo dirray deinz moun fee et ne mys saunz ceo qe il soit hors de moun fee. — STON. Il put estre qe devaunt temps de memore vous avez lete,[2] et qe lautre attachea lete a luy, et par tiel manere lad use de tut temps; par quei il covent respoundre a luy lequel il ad lete[2] ou noun.—*Parn.* Il suffist a nous de meintenir nostre avowere; et demandoms jugement del houre qe il ad

A.D. 1339.

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[1] MS. lese.
[2] MS. lesse.
[3] MS. rein^{r}.
[4] MS. les.

A.D. 1339. a Leet, and that he is resiant within the precinct of our manor; judgment; and we pray the Return. — *Pole.* And we pray judgment since you have not denied that we and our ancestors were the tenants of another person, and resiant within another person's Leet; and we pray our damages. — SCHARDELOWE. You may have a Leet throughout the whole of the manor together with the whole of the vill, and yet he may have a Leet within yours, and I am in that position, myself. — *Parning* (to avoid delay, &c.) He has been resiant [within our Leet], without this that the other and his ancestors have had a Leet from time whereof memory is not. —*Pole.* They have had a Leet from time &c.; ready &c.

Pole. One A. was seised of a manor in Laxton in which he had view [of frankpledge] from all time. From A. it descended to two daughters who made partition of the manor; and the view [of frankpledge] remained in common. And of the daughters there are issue T. and J. within whose view [of frankpledge] we are resiant, and have always been attendant thereat &c., and not at his Leet; judgment.—*Parning.* You have admitted that we have a Leet by your plea, &c.; and that which you call a manor is nothing but certain lands that are held of the manor which we have; and we tell you that we and our ancestors have been seised of the whole of the manor, as well of this parcel as of the rest, from all time, until the King recovered; ready &c. — ALDEBURGH. Will you say that the resiants on the land which he holds have from all time been attendant at your Leet? — *Parning.* There is no need, for if I have a Leet throughout the whole and every part of the manor, the resiants would come at my will even though they never have come; and by his answer he traverses my avowry, wherefore to maintain it is sufficient without pleading anything to what he has said, for I must first be received to my avowry.— SCHARDELOWE. Is it not possible that one view may be within another? Wherefore if he be resiant within the precinct of your view, that does not prove that he shall come to your view, for, perhaps, he shall come to the view which is within yours.— *Parning* (as if assenting to this). Then he can plead that, but he

conu qe nous avoms lete, et qe il est receaunt deinz le purseint de nostre manere; jugement; et prioms retourn. — *Pole.* Et nous jugement del houre qe vous navez pas dedit qe nous fumes autri tenaunt et resceaunt deinz altri lete[1] et nos auncestres &c.; et prioms nos damages.—Sch. Vous poiez aver un lete[1] par my tut le manere od tut la ville, et unquore put il aver un lete[1] deinz vostre, et en cel cas suy jeo mesmes. —*Parn.* (pur deliverer &c.) Il ad este resceaunt saunz ceo qe lautre et ses auncestres ount un lete[1] de temps dount il nad memore. — *Pole.* Il ount ewe lete[1] de temps, &c.; prest &c. A.D. 1339.

Pole.[2] Un A. fut seisi dun[3] manoir en Laxtone deinz quel il avoit vewe de tut temps. De A. descendi a ij. filles qe partirent le manoir, et la view demura en comune. Et de les filles sount issue T. et J. deinz qi[4] view nous sumes resceauntz, et avoms este entendant de tut temps &c., et nient a sa lete; jugement.—*Parning.* Vous nous avez conu lete par vostre plee &c. et ceo qe vous appellez manoir ceo nest qe certeins terres qe[5] sount tenuz del manoir quel nous avoms; et vous dioms qe nous et noz auncestres avoms este seisi par my tut le manoir, auxi bien en cel parcel come le remenant, de tut temps, tanqe le Roi recoverist; prest &c. — Ald. Voilletz dire qe de tut temps les resceauntz de la terre qil tient ount este attendauntz[6] a vostre lete?—*Parn.* Ne bosoigne pas, qar, si jay lete par my et par tut le manoir, les resceaunts viendreint a ma volunte coment qe unqes ne vyndrent; et il est par soun respons a travers de ma vowerie, par quei suffit del mayntener saunz rien pleder a[7] soun dit, qar jeo day primes estre resceu a ma vowerie.—Sch. Nest ceo possible qun view soit deinz un autre? Par quei sil soit resceaunt deinz la pursente[8] de vostre view ceo ne prove pas qil vendra[9] a vostre view, qar par cas il vendra a la vewe qest deinz la vostre.—*Parning.* Ceo poet il donqes pleder, [*quasi diceret sic,*][10] mes il ne plede pas par la

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[1] MS. lees.

[2] This report of the conclusion of the case is from T., L., and 25184.

[3] T., du.

[4] T., quel.

[5] T., et.

[6] L., entendaunt.

[7] L., et.

[8] L., seinte; 25184, ceinte.

[9] L., voucha.

[10] The words between brackets are in T., but not in L. nor in 25184.

A.D. 1339. does not plead in that way; and if a resiant within my Leet has gone to another's Leet of his own accord from all time, still he shall come to my view, and thereupon I am willing to abide judgment; but to avoid delay, we tell you that he is resiant within our Leet, without this that the others have had a Leet from all time; ready &c.—*Pole.* They have had a Leet from all time; ready, &c.

Quid juris clamat.

(23.) § *Quid juris clamat* against a woman, in which it was supposed that she held of the cognisor for term of life.—*Gayneford.* As to two parts we tell you that we do not hold nor on the day of the acknowledgment did we hold of the cognisor; ready &c. And as to the residue, we hold in dower (and not for term of life) of the inheritance of the cognisor; ready &c.—*Pole.* That amounts to saying that you did not hold of our cognisor on the day of the acknowledgment, as the note supposes; ready &c. that you did. — HILLARY. You may have the averment on your side, but what they say shall be entered.—And so it was.

Annuity.

(24.) § William de Leicester, clerk, sued a writ of Annuity against the Abbot of Ramsey, and counted of an annuity of 40s. granted by the same Abbot; and the words in the deed were "until he be advanced." —*Pole* defended the wrong and force, and prayed, for the bailiff of the Abbot, cognisance of the plea, for the contract was made within their franchise; and he showed the allowance [of cognisance] in a previous case in which the Abbot himself was a party; wherefore the franchise was on the point of being allowed. — And then came *Parning* and alleged that the Abbot had a day, *Prece Partium,* and thus he had affirmed the jurisdiction of the Court. — *Gayneford.* We could not know where the contract was made before you counted.—Notwithstanding this, the franchise was disallowed. Wherefore they prayed oyer of

manere, et si un resceaunt deinz ma lete ad ale a autri[1] lete de soun gree de tut temps, unqore il vendra a ma view, et sour ceo jeo voille demurer en jugement; mes pur estre deliveres vous dioms qil est resceaunt deinz nostre lete, saunz ceo qe les autres ount ew lete de tut temps; prest &c. — *Pole.* Qils ount eu lete de tut temps; prest, &c. A.D. 1339.

(23.)[2] § *Quid juris clamat* vers une femme, ou[3] fust suppose qele tient a terme de vie del conisour. —*Gayn.* Qant a ij. parties nous vous dioms qe nous ne tenoms ne tenimes de conisour jour de la conisance &c.; prest &c. Et qant al remenant nous tenoms en dower, et noun pas a terme de vie, del heritage le conisour; prest &c. — *Pole.*[4] Taunt amounte qe vous ne tenistes pas de nostre conisour jour de la conisance, sicome la note suppose; prest &c. qe si.—HILL. Vous poez aver laverement de vostre part, mes lour dit serra entre.—*Et ita fuit.* Quid juris clamat. [Fitz. *Quid juris clamat,* 29.]

(24.)[5] § William[6] de Leycestre, clerk,[7] suyst bref dannuite vers Labbe de Ramsey, et counta dun annuite de xl. *s.* grante par mesme Labbe; et le fet voleit[8] tanqil fust avance.—*Pole* defendi tort et force, et pria pur le baillif Labbe conisance del plee, qar la contracte fust fait deinz lour franchise, et mostra lalowance ou Labbe mesme fust autrefoitz partie; par quei la franchise fust en point destre alowe. — Et donqes vynt *Parn.*[9] et allegga qe Labbe avoit jour par *Prece Partium,* issi avoit il afferme jurisdiccion de Court.—*Gayn.*[10] Nous ne poames saver ou le contracte se fist devant qe vous countastes. — *Hoc non obstante* la franchise fust desalowe. Par quei il demanderent Annuite. [Fitz. *Conisans,* 83.]

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[1] T., autre.

[2] From T., L., and 25184.

[3] T., qe.

[4] MSS. *Gayn.; Pole* is from Fitzherbert.

[5] From T., L., and 25184 (the names having been corrected by the record, *Placita de Banco,* Easter, 13 Edw. 3, R° 128. d.) as far as the point at which the larger type ends.

[6] T., L., and 25184, B.

[7] clerk is in L., but not in T. nor in 25184.

[8] L. and 25184, fut.

[9] MSS. *Pole;* but *Pole* was counsel for the Abbot.

[10] 25184, *Parn;* this was probably meant to be written instead of *Pole* two lines above. See note 9.

A.D. 1339. the deed &c. — They were adjourned.—Afterwards in Trinity term *Pole* said, He can not demand anything; for we tendered to him the church of Ringstead, which is a suitable benefice, not litigious, and of our own patronage, on a certain day, in a certain year, and at a certain place, in the presence of &c., which you refused; and so the annuity is extinguished; judgment.—*Stouford.* We did not refuse it; ready to defend by our law.—*Gayneford.* Do you mean that to be your answer?—*Stouford.* If the Court considers that the wager of law lies, we do mean it, for we are plaintiff; and if not, we will aver it. —HILLARY. Then let the averment stand; but it shall be on the tender of the benefice, that is to say as to whether he tendered it or not.—*Stouford.* We desire it in that manner.—*Pole.* The Abbot holds by barony, and is a Peer of the Realm, and we pray that a day of grace be not given against him. — And nevertheless it was given; for they pleaded to the country on the Octaves of Trinity, and had a day on the Octaves of Saint Michael.

§ William de Leicester brought a writ of Annuity against the Abbot of Ramsey. *Gayneford* counted how the Abbot granted to William de Leicester an annuity of five marks until he should be advanced to a benefice of Holy Church. —*Pole* rehearsed the count, went out to imparl, came back, and said that he had tendered a suitable benefice (to wit to the Church of Ringstead) in the presence of John Baroun, John de Temofford, and others, and that William de Leicester refused it; judgment whether action &c.—*Gayneford.* He did not refuse; ready &c. by his law against the law and against the suit of the Abbot.—*Pole.* And do you wish the averment to be taken on that?—ALDEBURGH. He has said that he made you a tender and that you refused; and to that you say that you did not refuse; and the tender must be held to be not

oy del fet &c.—[*Adjornantur.*—Puis][1] [*Termino Tri-* A.D. 1339.
nitatis][2] *Pole.* Il ne poet rien demander;[3] qar nous lui tendimes leglise de Ryngstede[4] qest covenable benefice nient litigious et de nostre avoweson[5] demene, certein jour, an, et lieu, en la presence &c., quele vous refusastes; issint lannuite esteinte; jugement. — *Stouf.* Nous ne refusames pas; prest &c. a defendre par nostre ley.—*Gayn.* Voillez ceo pur respons? — *Stouf.* Si la Court veie[6] qe la ley gise, nous le voloms, qar nous sumes pleintif; et si noun, nous le[7] voloms averer.—HILL. Estoise donqes laverement; mes ceo serra sur la tendre del benefice, saver le quel il tendist ou noun. — *Stouf.* Nous le voloms par la manere.—*Pole.* Labbe tient par baronie, et est pere de la terre, et prioms qe jour de grace ne soit pas done contre lui. — *Et tamen fuit;* qar ils plederent al pais as uytaves de la Trinite, et ount jour as uytaves de Seint Michel.

§ William de Leycestre[8] porta bref dannuite vers Labbe de Rameseye. — *Gayn.* counta coment Labbe graunta a William de Leycestre un annuite de v. marcz taunqe il fut avaunce a benefice de Seint Eglise. — *Pole* rehercea le counte, issit denparler, revynt, et dit qe il avoit tendu covenable benefice, saver al Eglise de Ryngstede,[9] en la presence Johan Baroun, Johan de Temofford et autres,[10] et il la refusa; jugement si accion &c.—*Geyn.* Il ne refusa mye; prest, &c., par sa ley countre ley et encontre sa sute. — *Pole.* Et sour ceo volez estre avere.[11]—ALD. Il ad dit qe il vous tendy et vous refusastes; et a ceo dites vous qe vous ne refusez mye; et le

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[1] The words between brackets are not in 25184.

[2] The words between brackets are in T., but not in L. nor in 25184.

[3] 25184, Il ne poet dedire.

[4] T., L., and 25184, E.

[5] L. and 25184, avowerie.

[6] L., voet.

[7] le is in L. and 25184, but not in T.

[8] This report of the case is from 16560 alone, in which MS. it occurs as of the following Trinity Term. The name of the plaintiff appears in the MS. as W. de C. It will be observed that *Gayneford* is here counsel for the plaintiff, but in the other report for the defendant.

[9] MS. E.

[10] 16560, la presence J. &c.; the names have been supplied from the roll.

[11] MS. avowe.

A.D. 1339. denied; therefore it must be understood that you accepted the tender, and consequently the annuity is extinguished.—*Gayneford.* He did not tender; ready to verify.—And the other side said the contrary.—And a day of grace was given, &c.

Scire Facias.

(25.) § One J. granted to B. the reversion of certain tenements, as of those which one Alice held in dower of his inheritance. Alice died, and after her death one abated upon the tenements. B. sued a *Scire facias* for J. to show cause why B. should not have execution upon the fine. — *Trewith.* Whereas you suppose that she held in dower of the inheritance of J., she did not hold in dower of his inheritance; ready &c. — *Parning.* You have not that averment in opposition to the fine; and, since you do not deny what is supposed by the fine, we pray execution. — *Trewith.* If the woman who held in dower had been brought into Court by the *Quid juris clamat,* it would have been a good plea for her to say that she ought not to attorn by reason of that grant because she did not hold in dower of his inheritance.—*Parning.* If we had brought a writ of Intrusion would that which you have now said have been a good plea? It would not have been so; no more here. — HILLARY. Yes, it may be, if you do not mention any attornment in your count &c., for against the attornment he shall not be received to say the reverse. — *Parning.* Her husband was seised of the same tenements, and died seised, and she was endowed thereof after his death; wherefore you shall not be received to say that she did not hold dower of J.'s inheritance. — SCHARDELOWE. What you say is good as evidence. — And afterwards the issue was taken as above.

Scire facias upon a fine.

§ *Scire facias* upon a fine by which was granted the reversion of certain tenements held by a woman in dower.—*Trewith.* We tell you that, on the day on which the acknowledgment was made, she did not hold in dower of the inheritance of the cognisor; ready &c. — *Parning.* You do not deny her tenancy in dower, and you do not show that she held of any other; wherefore &c.; and this writ of execution is instead of a writ of Intru-

tentre serra tenu anient dedit; dounqes deit homme entendre qe vous acceptastes, et *per consequens* lannuite estent.—*Geyn.* Il ne tendy mye; prest daverer. — *Et alii e contra.*—Et jour de grace fut done &c. A.D. 1339.

(25.)[1] § Un J. graunta la reversion de certeinz tenementz a B. de ceo qun Alice tient en dowere de soun heritage. Alice morust, apres qi mort un abati. Il suy un *Scire facias* sil savoit rien dire pur quei il navereit execucion hors de la fyn.—*Trew.* La ou vous supposez qe ele tient en dowere del heritage J. ele ne tient point en dowere de son heritage; prest &c.—*Parn.* Vous navez mye cel averement countre la fyn; et, de pus qe vous ne deditez pas ceo qe la fyn suppose, nous prioms execucion. — *Trew.* Si la femme qe tient en dowere eust venu en Court par le *Quid juris clamat,* il eust este bone plee pur luy qe il ne dust attourner par cel graunt qar ele ne tient pas en dowere de son heritage.—*Parn.* Si nous eussoms porte bref de Intrusion serreit il bon plee ceo qe vous avez parle ore? Noun serroit; nient plus icy.—HILLAR. Si vous ne facez nul mencion en vostre counte de nul attournement &c., qar encountre lattournement il ne serra mye resceu a dire le revers.—*Parn.* Soun baroun feut seisi de mesmes les tenements, et morust seisi, de quei ele feut dowe apres sa mort; par quei a dire qe ele ne tient dowere de son heritage vous ne serrez resceu. — SCHD. Ceo qe vous parlez est bon evidence. Et pus lissue fut pris *ut supra.* Scire Facias.

§ *Scire*[2] *facias* hors dune fyne par quele la reversion de certeinz tenementz qune femme tynt en dower furent grantes. —*Trew.* Nous vous dioms qele ne tynt pas del heritage le conisour en dower jour de la conisance fait; prest &c.—*Parn.* Vous ne dedites pas sa tenance en dower, et vous ne mostrez pas qele tynt dautre; par quei &c.; et ceste execucion est en Scire Facias hors dune fyne. [Fitz. *Issue,* 28]

[1] From 16560 alone as far as the point at which the larger type ends.

[2] This report of the case is from T., L., and 25184.

A.D. 1339. sion, upon which writ what he says would not be a plea.—SCHARDELOWE. In a *Quid juris clamat* would not the woman have this same plea?—*Parning.* I think not; besides, in a writ of Intrusion this would not be a plea, as above.—*Quære.*—And afterwards the averment was received.

Avowry. (26.) § *Pole,* for the plaintiff. We tell you that a carucate of land, of which the place &c., was in the seisin of one A., from whom it descended to B. and C. as daughters and heirs. And he showed that partition was made, so that a moiety, of which the place where the taking &c. is parcel, was allotted to B., and the other moiety to C., from whom he conveyed, by descent, that purparty to the plaintiff; and from B. he conveyed, by the blood, her purparty to one J. whose estate the avowant has; judgment whether one who has the estate of a parcener can avow upon a co-parcener.—*Gayneford.* We and our ancestors and those whose estate we have, from all time have been seised through your hand and through the hands of your ancestors; ready &c.—*Pole.* Answer to the parcenary.—SCHARDELOWE. You suppose him to be a stranger in blood, where he is in a different position from that in which he would be if he were a privy in blood who could acknowledge the lineage, although its origin was before time of memory; for although it was before time of memory and the parcenary was continued since time of memory, still a privy in blood shall be put to answer this, but not a stranger who has his estate.—*Pole.* We tell you that since time of memory the common ancestor was seised.—*Gayneford.* We will aver the continuance of the seisin of which we have spoken.—*Pole.* That you can not do; for the parcenary begun at so late a period ousts you from the averment.—*Gayneford.* We will aver the continuance, without this that any such person as you suppose to have been common ancestor was seised since time of memory; ready &c.—And the other side said the contrary, &c.

lieu dun bref de Intrusion, en quel bref ceo qil dit ne serreit pas plee.—Sch. En *Quid juris clamat* navera la femme mesme cel plee?—*Parn.* Jeo croi qe noun; ovesqe ceo, en bref de Intrusion ceo ne serra pas plee, *ut supra.*—*Quære.*—Et puis laverement fust resceu. A.D. 1339.

(26.)[1] § *Pole,* pur le pleintif. Nous vous dioms qune carue de terre, dont le lieu &c., fust en la seisine un A. de qi descendi a B. et C.[2] come filles et heirs. Et mostra qe purpartie fust fait, issi qe la moite, dont le lieu ou la prise &c. est parcele, fust alote a B., et lautre moite a C., de qi il conveia par descente cel[3] purpartie al pleintif; et de B. conveia en sank sa purpartie a un J. qi estat lavowant ad; jugement si celui qad estat de parcener sur parcener pusse avower.—*Gayn.* Nous, et noz auncestres, et ceux qi estat nous avoms ount[4] este seisi par my vostre mayn et par my les mayns vos auncestres de tut temps; prest &c.—*Pole.* Responez a la parcenerie.—Sch. Vous le supposez estrange du sank, ou il est en autre cas qe sil fust prive du sank qe purreit conustre le cepe, coment qe ceo fust avant temps de memorie; [qar mesqe le cepe fust devant temps de memorie et la parcenerie fust continue puis temps de memorie,][5] uncore prive du sank serra a ceo mys de respondre, mes estrange qavoit son estat nient.—*Pole.* Nous vous dioms qe puis temps de memorie le comune auncestre fust seisi.—*Gayn.* Nous voloms averer la continuance de seisine dont nous parlames.—*Pole.* Ceo ne poetz faire, qar la parcenerie comence de si bas temps vous ouste del averement.—*Gayn.* Nous voloms averer la continuance, sanz ceo qe nul tiel qe vous supposez comune auncestre fust seisi puis temps de memorie; prest &c.—*Et alii e contra, &c.*

Avowri. [Fitz. *Avowre,* 121.]

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[1] From T., L., and 25184 as far as the point at which the larger type ends.

[2] T., A. et B.; L., W. et E.

[3] T., del.

[4] T. and 25184, avoms.

[5] The words between brackets are not in L.

A.D. 1339. Replevin.

§ Robert de C. complained that W. de K. tortiously took his cattle. — *Gayneford* avowed for that Robert de C. held by certain services, and for that two shillings were in arrear he so avowed, &c.—*Pole.* One J. was seised of this land, and had issue two daughters, and died seised. And after his death they entered and made partition between them, so that this land which he supposes to be held &c. was allotted to the one parcener whose issue the plaintiff is, and other land to the other parcener whose estate the avowant has; judgment whether he who has the estate of a parcener can avow upon a coparcener. —*Gayneford.* He, and his ancestors, and those whose estate he has have held of me and of my ancestors from time whereof there is no memory.—*Pole.* You shall not get to such a general averment without answering to what I have said.

Avowry.

(27.) § Avowry in respect of 24 cows for one Henry de Iddesworth, Prebendary of St. Paul's, who showed that he was seised, as in right of his prebend, of a manor,[1] within which he had bondmen and freemen also, who held in villenage by certain customs,— and that whoever holds the land, be he villein or free, shall perform the customs,—that is to say, that the lord after the death of each tenant shall have the best beast, so that if this beast be eloigned, he and his predecessors have always distrained in the tenements until satisfaction was made to them; and he said moreover that his predecessor leased to one R., the plaintiff's husband, a messuage, which R., at his death, had a horse worth 10*l.* which was eloigned; and, for the horse, he avows the distress within the same messuage, as of the beasts of the deceased on the day of his death. — *Trewith.* You see clearly how he attaches no tort in our person in respect of the eloignment; wherefore even though the usage were such as he alleges, it would not be lawful to take another's beast, for that sounds in oppression of the people, and it is

[1] In Kentish Town, according to the record.

§ Robert[1] de C. se pleint qe W. de K. atort prist ses avers. *Geyn.* avowa pur ceo qe Robert de C. tient par certeinz services, et pur ceo qe ij. *s.* &c. feurent arere si avowa &c.—*Pole.* Un J. fust seisi de cele terre, et avoit issue ij. filles, et morust seisi, apres qi mort ils entrerent et fesoient purpartie entre eux, issint qe cele terre qe il suppose estre tenu &c. feut allote al un parcenere qi issue celuy qe se pleint est, et autre terre al altre parcenere qi estat cely qe avowe ad; jugement si[2] celuy qad estat de parcenere sour parcenere pusse avower.—*Geyn.* Luy, et ses auncestres, et ceux qi estat il ad ount tenu de moy et de mes auncestres de temps dount niad memore.—*Pole.* Vous navendrez mye a tiel general averement saunz respoundre a ceo qe jeo ay dit. A.D. 1339. Replegiari.

(27.)[3] § Avowerie de[4] xxiiij.[5] vaches pur un Henri de Iddesworthe[6] provandrer de Seint Paule, qe mostra qil est seisi dune manere, come de dreit de sa provandre, deinz quele il ad boundes et franks auxi, qe tenent en villenage par certeins customes, et qi qe tient la terre, soit villeyn ou frank, fra les custumes, saver, qe le seignur apres la mort chescun tenant &c. le meillour beste, issi qe si cele beste si soit aloyngne, lui et ses predecessours tout temps ount destreint en les tenementz tanqe gree lour fust fait; et dit outre coment son predecessour lessa a un R.,[7] baron le pleintif, un mies, quel R.[7] a son moriaunt avoit un chival pris de x. *li.*[8] qe fust aloygne; et pur le chival il avowe la destresse deinz mesme le mies, come des bestes[9] le mort jour qil morust.—*Trew.* Vous veez bien coment il attache[10] nul tort en nostre persone del alloygner; par quei tout fust lusage tiel come il allegge, ne lirreit pas de prendre autri beste, qar ceo soune en oppression du poeple, et est contre lestatut Avowri. [Fitz. *Prescription*, 29.]

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[1] This report of the case is from 16560 alone.

[2] MS. qe instead of jugement si.

[3] From T., L., and 25184 as far as the point at which the larger type ends.

[4] 25184, pur.

[5] 25184, xliij.

[6] So in the record, *Placita de Banco*, Easter, 13 Ed. 3. R°. 112, d.; L., Hidesworde; T. and 25184, Hydesworthe. The Plaintiff was Matilda, widow of Robert Kestene.

[7] MSS. B.

[8] So in 25184 and in the record; T. and L., xl. s.

[9] T., de bledz instead of des bestes.

[10] T., assigne.

A.D. 1339. contrary to the Statute [1] to make such an outrageous distress; and he has not denied that they were our beasts; judgment; and we pray our damages. — *Parning.* Then the usages are such, and we have said that they were the beasts of the deceased at the time of his death.— *Trewith.* You do not deny, by the manner of your plea, that on the day of the taking the beasts were ours; and we make protestation that we do not admit the points of your avowry; but you see clearly how he rests his avowry on an usage between him and his villeins, whereas between lord and villein an usage can not bind; for whosoever would aid himself by usage against his villein would enfranchise him, for between himself and his tenants at will neither usage nor custom can be affirmed; for it is his own land, and he can oust them at his own will; wherefore his avowry is founded on a thing which is not to be intended by law; judgment.— *Parning.* Then we are agreed that the usage is such.— *Trewith.* I do not plead in that manner, for you found your claim on an usage which can not be understood.— And the opinion was that *Trewith's* demurrer was good. —And afterwards he waived it and said, There are twenty-four hides of land of the right of the Church of St. Paul, within which this manor is, where the usage is such that the freemen within the hides may sell their lands, and when &c., they shall come and surrender in the lord's court to the use of the intended feoffee, and the bailiffs shall do execution; and, if several persons be enfeoffed, a heriot shall not be given until after the death of the person last seised; and our husband and we purchased jointly, to us and our heirs, from one J. in the manner aforesaid; judgment whether you can avow for the heriot.—*Parning.* You see clearly how she makes

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[1] 51 Hen. III. St. 4. (*De Districtione Scaccarii*), and 52 Hen. III. (Stat. Marlb.) c. 4.

de faire tiel outrage a destresse; et il nad pas dedit A.D. 1339.
qe ces furent noz bestes; jugement; et prioms noz damages.—*Parn.* Donqes sont les usages tiels, et nous avoms dit qils furent les bestes le mort qant il morust. — *Trew.* Vous ne dedites pas par la manere de vostre plee qe jour de la prise les bestes ne furent les nos; et fesoms protestacion qe nous ne conusoms pas les pointz de vostre avowerie; mes vous veiez bien coment il lie savowerie par usage entre lui et ses villeyns, ou entre seignur et villeyn usage ne poet lier; qar qi qe soi voille eider[1] contre son villeyn par usage il ly[2] enfranchereit, qar[3] entre[4] lui et ses tenantz a volunte ne poet usage ne custome estre afferme; qar cest sa terre demene, et il les poet ouster a sa volunte demene; pur quoy savowerie est foundu sur chose qe nest pas entendable de ley; jugement.—*Parn.*[5] Donqes sumes a un qe lusage est tiel. — *Trew.* Jeo plede pas par la manere, qar vous foundes sur usage qe ne poet estre entendu.—Et opinion fut qe *Trew.* demura bien. —Et puis il weyva, et dit qil y ont xxiiij.[6] hides de terre del dreit[7] del eglise de Seint Paule, deinz queux cel manoir est, ou lusage est tiel qe les franks deinz les hides pount vendre lour terres, et qant &c., il vendront et rendront en la court le seignur[8] al oeps[9] celui qe serra feffe, et les baillifs front[10] execucion; et, si plusours soient feffez, heriet ne serra pas fait fors apres la mort le darrein qe soit seisi; et nostre baron et nous purchaceames jointement[11] a nous et noz heirs de un J.[12] par la manere avantdite; jugement si pur heriet puissez avower. — *Parn.* Vous veez bien

[1] L., si qe le voleit eidre, instead of qi qe soi vo .
[2] T., se.
[3] L., ne.
[4] 25184, nentre.
[5] 25184, *Pole.*
[6] 25184, xiiij.
[7] The words del dreit are not in L.
[8] 25184, la instead of le seignur.
[9] 25184, use. The words in the record are *ad opus.*
[10] T., firent; L., fra.
[11] jointement is in 25184, but not in T. nor in L.
[12] MSS. A. It was John, Vicar of Saint Pancras, Kentish Town, according to the record.

A.D. 1339. herself our tenant by the manner of her plea, for she pleads as privy to us, and the manner in which she shows that she is tenant proves that it would be a disseisin to us if we say truly that the land is holden in villenage; and if the land was the freehold of him from whom she says she was purchaser it is a disseisin to him, for the delivery by the bailiff without warrant would be wrongful; wherefore she as our tenant can not avail herself of such an answer. — *Gayneford.* And inasmuch as we have traversed your avowry, and you do not maintain it, we demand judgment and pray our damages.—SCHARDELOWE to *Parning.* If your avowry were upon a very tenant for service, your argument would hold good; but you avow for a custom which she defeats. — *Parning.* Her husband held in villenage as we suppose; ready &c. — *Gayneford.* He and we held jointly, to us and our heirs, without this that he held in villenage, ready &c. — And the other side said the contrary.—And afterwards, on this claim of freehold, Henry de Iddesworth entered and ousted the tenant, and she re-ousted him; for which he brought an assise, as appears in Michaelmas term in the 13th year.[1]

Avowry for Heriot.

§ Alice complained in respect of her cattle tortiously taken by one W.—*Stouford.* You have here W. who avows the taking as good and rightful for the reason that he is seised of the manor of C., where there is an usage in respect of those who hold of the manor and in respect of all the tenants, as well the villeins as the free, such that after their death he shall have their best beast, and, if it happen that the best beast be eloigned, that he can, instead thereof, take other beasts found upon the land; and of this usage he and his ancestors have been seised from time whereof there is no memory. And we tell you that we seised a carucate of land which was held by one of our villeins, and leased the land to hold as the villein held it. And after the death of the lessee there was a horse of his, of the value of ten pounds, which was eloigned, and so

[1] See No. 54 in Michaelmas Term.

coment ele se fait nostre tenant par la manere de son plee, qar ele plede come prive a nous, et la manere coment ele mostre qel est tenant prove qe ceo serreit une disseisine a nous si nous dioms verite qe la terre est tenuz en[1] villenage; et si la terre fust frank tenement de celui de qi ele se dit purchaceour cest une disseisine fait a lui, qar la livere de baillif sanz garrant serreit tort; par quei ele come nostre tenant ne poet tiel respons enjoier.—*Gayn.* Et de ceo qe nous avoms traverse vostre avowerie, et vous ne lui meintenez pas, nous demandoms jugement et prioms nos damages.—SCH. a *Parn.* Si vostre avowerie fust sur verroy tenant pur service, vostre resoun liereit; mes vous avowez pur custome quele ele defait.—*Parn.* Qe son baron tient en villenage come nous supposoms; prest &c.[2]—*Gayn.* Qe luy et nous tenoms joynt, a nous et noz heirs, sanz ceo qil tient en villenage; prest &c.[3] —*Et alii e contra.*—Et puis, sur cel clamer de frank tenement, Henri de Iddesworth[4] entra et ousta le tenant, et ele lui reousta, de quel il porta lassise, *ut patet termino Michaelis anno* xiij°. A.D. 1339.

§ Alice[5] se pleint de ses avers atort prise par un W.—*Stouf.* Vous avez cy W. qe avowe la prise bone et dreiturele par la resoun qe il [est] seisi del manoir de C., ou yad un tiel usage qe ceux qe tenent del manoir, et touz les tenauntz auxi bien les villeyns com frankes, apres lour mort il avera la meillour beste, et, si le cas aveigne qe la meillour beste soit alloyne, qe il pusse prendre autre beste pur ceo trove en la terre, de quele usage luy et ses auncestres ount este seisiz de temps dount nyad memorie. Et vous dioms qe nous seisimes un carue de terre qe fut a un de noz villeyns, et lessames la terre a tenir come le villeyn tynt. Et apres sa mort il avoit un chival, pris de x. *li.*, quel fut alloyne, issint les prist il com Avowerie pur Heriet.

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[1] The words tenuz en are in T., but not in L. nor in 25184.

[2] The words *et alii e contra* are added in L.

[3] The words prest &c. are not in 25184.

[4] T. and 25184, H.; L., de Hidesworde.

[5] This report of the case is from 16560 alone.

A.D. 1339. the avowant took the cattle as beasts which were those of the deceased and were employed in the tillage of the soil.—*Rokell.* He has not denied that he took our cattle; and this usage that he alleges is contrary to law and reason, for it comes to this that one may distrain upon his own land in a case other than that of *damage feasant;* judgment; and we pray our damages; and, besides that, we pray that he put it with certainty whether he avows as in respect of our cattle or in respect of the cattle which were those of the deceased. — SCHARDELOWE. It must be understood that they were your cattle, and, if you are able to prove that the taking was tortious, you will recover your damages, as in respect of your cattle.—*Trewith.* He avows &c. by reason of an usage, to wit that he shall have the best beast after the death of every villein, whereas you well know that by the law of the land everything that the villein has belongs to his lord; so the usage cannot be obligatory as against him, for according to this usage he would be free; wherefore it appears that by such usage you cannot maintain this avowry. And, as to the usage which you have alleged as against his free-holders, this usage or custom cannot exist between any others but those who are tenants of the land and the lord, and to that we are altogether strangers, &c.; but we must be always understood as making protestation that we do not admit any such usage as he has alleged. — SCHARDELOWE. To come to your meaning, you mean that such an usage cannot bind you, and he means that it can, wherefore you should join upon that point and abide judgment.—*Trewith.* If we were driven to admit the usages he would have the Return immediately; and let us suppose that I demand against any one ten pounds by reason of an obligation made to me, and he comes into Court and says that he paid his money, and he puts forward no acquittance, and I make my demand against him on the ground that he puts forward no acquittance, &c., if the payment be held to be not denied by me, I shall be charged; and yet in the ordinary course of law I shall not be charged; no more here.—And afterwards *Trewith* waived this objection, and said that there was an usage such that the tenants could sell the land in such a manner that they had to come into Court and take the land by verge from the lord's bailiff, and pay a fine to him, and that, in case three or four purchased jointly, none of them should pay or be charged in respect of one of them after his death, nor until after the death of him who should die last; judgment whether, while a purchaser is living, you can have an avowry for a heriot. — And he showed how the plaintiff purchased in fee jointly with him by reason of whose death the avowant avowed, &c.

beste qe furent a celuy qest mort et meinoveraunt en le soil. A.D. 1339.
— *Rokel.* Il nad pas dedit qe il ne prist noz avers; et cel usage qe il allegge est countre ley et resoun, qar il est &c. qe homme pusse destreindre en sa terre demene sil ne fut en cas pur damage fesaunt; jugement; et prioms nos damages; et, od cel la, nous prioms qe il mette en certein le quel il avowe come de noz avers ou de les avers qe furent al mort. — Sch. Homme deit entendre qe il furent voz averes, et, si vous purrez prover qe la prise fut torceneuse, vous recoverez vos damages, com de voz averes.—*Trew.* Il avowe &c. par resoun dun usage, saver qe il avera la meillour beste apres la mort de touz ses villeins, ou vous savez bien qe par ley de tere tut ceo qe le vileyn ad si est a soun seignour, issint ne put usage lier devers luy, qar par cel usage il serreit frank; par quei il semble qe par tiel usage vous ne poiez cest avowere meintenir. Et, qaunt al usage qe vous avez allegge devers ses franks, cel usage ne cel custume ne put estre entre autres mes entre ceux qe sount tenauntz de la tere et le seignour, et a ceo nous sumes tut estraunge &c.; mes tut temps nous fesoms protestacion qe nous ne conisoms pas tiel usage com il ad allegge. — Sch. A vostre entente vous entendez qe tiel usage ne vous put lier, et il entent qoil, par quei il covent qe vous soiez a un et demorez en jugement. — *Trew.* Si nous fussoms chace de conustre les usages il avereit retourn meyntenant; et mettoms qe jeo demande vers un x. *li.* par obligacioun fait a moy, et il vient en Court et dit qe il paia les deners a luy, et il mette avaunt nul acquitaunce, et jeo demande de ceo si qe il mett avaunt nul acquitaunce, &c., si le paiement soit tenuz a nient dedit de moy, jeo serra charge; et par ley jeo ne serra mye charge; nent plus issi.—Et pus *Trew.* weyva cel chalaunge, et dit qe il avoit tiel usage qe les tenauntz pussent vendre la terre issint qe il dussent venir en Court et prendre la terre par verge del baillif le seignour, et faire fyn a luy, et, en cas la ou iij. ou iiij. purchacerent jointes, nul de eux ne freit ne serreit charge apres sa mort de lun, et taunqe apres la mort celuy qe dreyn morust; jugement si, vivaunt la purchaceour, heriet avowerie pussez faire. — Et moustra coment le pleintif purchacea joint en fee ov celuy par qi mort il avowe, &c.

A.D. 1339. Entry.

(28.) § J. de C. brought a writ of Entry *dum fuit infra ætatem* against J. in respect of an alienation made to J. while J. de C. was within age. — *Parning.* The tenements are in Hereford where the usages are that when a man is of such an age that he is able and knows how to measure an ell of cloth, or reckon up to twelve pence, he can sell his land; and J. de C. was of such age at the time of the alienation; judgment whether an action, &c.—*Trewith.* He has not alleged the age with certainty; judgment whether the law puts us to answer to what he has said; and we pray seisin of the land.—SCHARDELOWE. Inasmuch as you have not alleged with certainty of what age he was at the time of the alienation, and the usage that you have here alleged is contrary to law (for one person is twenty years old before he knows how to measure an ell, and another knows how when he is seven years old &c.) therefore it is adjudged &c. that you (the demandant) recover &c.

Entry dum fuit infra ætatem.

§ *Dum fuit infra ætatem* for tenements in Gloucester.—*Parning* alleged that, by the usage of this town, when one knows how to reckon up to twelve pence, and to measure an ell of cloth, he is of an age to aliene his land, and that of this age was the demandant when he leased,—that he knew how, as above; judgment whether an action &c. — *Pole.* Since he does not give the age in a certain number of years, his plea is a non-certain plea, to which the party can not have an answer; judgment. — And this plea was pleaded to judgment in Michaelmas term in the 6th year, and was pending until now. — SCOT. Because you have not alleged the answer in certain so that he can have a reply, the COURT adjudges that he do recover his seisin of the land &c.

Quare Impedit.

(29.) § The Abbot of Newenham[1] brought a *Quare impedit* against R. Valois and J. Giffard, clerk, as appears in the 7th year, and it was pending until now. — *Parning.* We say that the Abbot who brought this writ is dead; judgment of the writ. — *Trewith.* His

[1] See p. 272.

(28.)[1] § J. de C. porta bref dentre *dum fuit infra ætatem* vers J. de un alienacion fait a luy taunt com il fut denz age.—*Parn.* Les tenements sount en Hereford ou les usages sount tiels qaunt un homme est de age qe il put et seit auner un aune de drap, ou counter a xij. deners, qe il put vendre sa terre; et il feut de tiel age al temps del alienacion; jugement si accion, &c. — *Trew.* Il nad mye allegge le age en certein; jugement si a ceo qe il ad dit la ley nous mette a respoundre; et prioms seisine de terre. — SCH. Pur ceo qe vous navez mye allegge en certein de quel age il fut al temps del alienacion, et le usage qe vous avez allegge si est countre ley, qar asqune homme est de xx. aunz devaunt qe il seit auner, et asqune le seit qaunt il est de vij. &c.; par quei agarde &c. qe vous recoverez &c. A D. 1339. Entre.

§ *Dum*[2] *fuit infra ætatem* de tenementz en Gloucestre.—*Parn.* allegga qe par lusage de cele ville qant homme seet conter a xij. deners et auner une aune de drap, il est dage daliener sa terre, et de cel age fust le demandant qant il lessa—qil savoit *ut supra;* jugement si accion &c.—*Pole.* Del houre qil donne pas lage en certein nombre danz, issi est son plee en noun certein, a quei partie ne poet aver respons; jugement. —Et ceo plee fust plede en jugement *anno sexto termino Michaelis,* et pendi tanqe ore. — SCOT. Pur ceo qe vous navez pas allegge le respons en certein issi qil poet a ceo aver respons, si agarde la COURT qil recovere sa seisine de terre &c. Entre dum fuit infra ætatem. [Fitz. *Dum fuit infra etatem,* 3.]

(29.)[3] § Labbe de Newenham porta un *Quare impedit* vers R. Valois et J. Giffard, clerc,[4] *ut patet anno* vij.[5] et pendi tanqore. — *Parn.* Nous dioms qe Labbe qe porte cestui bref est mort; jugement de bref.[6] — *Trew.* Son attourne est icy, et prie son Quare Impedit.

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[1] From 16560 alone as far as the point at which the larger type ends.

[2] This report of the case is from T., L., and 25184.

[3] From T. L. and 25184 as far as the point at which the larger type ends.

[4] T., G.

[5] 25184, xij.

[6] T., cestui bref.

A.D. 1339. attorney is here, and prays his judgment on plea pleaded, and he neither can nor ought to be party to try this thing, for then the plea as regards the principal would be discontinued.—*Parning.* We will aver against the attorney that the Abbot is dead, to convict him of deceit in answering for a person who is dead.

Quare Impedit.

§ The Abbot of C. brought his *Quare impedit* against J.—*Parning.* J. tells you that since the last continuance the Abbot has died &c.—*Trewith.* The Abbot is here by attorney, and what you say respecting the death is a question of fact, wherefore if issue were taken, the effect would be, according to his intent, to give a day to one who is dead, which would be contrary to law.—ALDEBURGH. If an Abbot has made his attorney, and is afterwards deposed, and another Abbot is created, his warrant is extinct; so is it also in a case in which he has died.

Entry ad terminum qui præteriit.

(30.) § *Ad terminum qui præteriit* against John de Halowe, who had aid of the King, as tenant for term of life; and afterwards the King sent his writ to the Justices setting forth that the King had since granted the reversion to John de Molyns, and directing them to proceed; wherefore John Halowe prayed aid of John de Molyns, who was ready in Court to join in aid; and because the demandant accepted him, the COURT allowed it; and he put forward the deed of the lessor by which the latter enfeoffed in fee with a clause of warranty &c.; judgment whether in opposition to the deed he shall be received to aver the lease.—*Pole.* We can not deny it.—Therefore he took nothing by his writ.—*Quære* concerning the aid in this case, if it had been counterpleaded.

Venire Facias.

(31.) § G. Talbot sued to the King by Petition to have certain lands and tenements which were seized into the King's hand by reason of forfeiture; wherefore the King assigned certain Justices by commission to enquire of his right; and, pending process thereupon against the

jugement sur le plce plede, et il ne poet ne deit èstre partie a trier ceste chose, qar donqes serra le plee sur le principal discontinue.—*Parn.* Nous voloms averer contre lattourne qe labbe est mort, pur atteindre lui de la desceite qe respond pur[1] mort persone. A.D. 1339.

§ Labbe[2] de C. porta soun *Quare impedit* vers J.—*Parn.* J. vous dit qe labbe puis la dreyn continuaunce est mort &c.—*Trew.* Labbe est cy par attourne, et ceo qe vous parlez de la mort est un chose qe chiet en fet, qar, si issue fut pris, ceo serreit a sa entente a doner jour a celuy qest mort, qe serreit countre ley.—ALD. Si un Abbe ad fet soun attourne, et pus soit depose, et un altre cree, son garrant est esteint; auxi est il en le cas ou il est mort. Quare Impedit.

(30.)[3] § *Ad terminum qui prœteriit* vers Johan de Halowe,[4] qavoit eide du Roi, come tenant a terme de vie; et puis le Roi manda son bref as Justices compernant coment le Roi avoit puis grante la reversion a Johan[5] de Molyns, et qils alassent avant; par quei Johan Halowe[6] pria eide de Johan de Molyns,[7] qe prest fust en court de joyndre; et pur ceo qe le demandant le accepta, COURT le suffrist; et mist[8] avant le fet le lessour, par quel il feoffa en fee ove clause de[9] garrantie &c.; jugement si encontre le fet daverer le lees serra il resceu.—*Pole.* Nous ne poms dedire. —*Ideo nil cepit per breve suum.*—*Quœre* del eide en ceo cas, sil ust este contreplede. Entre ad terminum qui prœteriit.

(31.)[3] § G. Talbot suyst au Roi par peticion daver certeins terres et tenementz[10] qe furent seisiz en sa mayn par forfaiture; par quoi le Roi assigna certeyns Justices par commission denquere de son dreit; pendant Venire Facias.

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[1] L., puis.
[2] This report of the case is from 16560 alone.
[3] From T., L., and 25184.
[4] T., H.; 25184, Habowe.
[5] T., J.
[6] L., Alowe; T., H.
[7] T., J. de M.
[8] T. and 25184, moustra.
[9] The words clause de are in 25184 alone.
[10] The words et tenementz are in L. only.

A.D. 1339. Inquest, the King devested himself in favour of six men, and the heirs of the body of one of them begotten. And afterwards the Inquest was returned, whereby it was found that the right was G. Talbot's, and that he by whose forfeiture &c. never forfeited. The Inquest was sent into the King's Bench, out of which issued a *Venire facias* against the three tertenants (for the three others were dead) to show if they had anything to say wherefore the lands should not be seized again into the King's hand, and be delivered to G. Talbot. — *Parning.* You have here two of them, who tell you that the third is dead and was so before the writ was purchased; judgment of the writ; for in a *Scire facias* this shall be a plea; and, if upon a writ of Trespass it can be shown that one against whom the writ is brought was dead before the writ was purchased, the writ is altogether abated, for it was always false; so here.—WILLOUGHBY. The case is not similar; for this writ is sued for the King, whereas the King in this case might have seized again &c. without suit; and, although he has done a courtesy, it is no reason why that should occasion a delay of his suit, especially when your answer is saved to you upon this writ as much as upon any other; wherefore answer, or we shall take the land into the King's hand. And suppose that the King brings a writ of Right or of Escheat against two, and one dies, his writ is good enough; and this writ is the writ of the King and not of the party; for the Petition which he sued at first to the King is his original against the King who then was tenant, and it is not rendered false by the alienation made by the King, pending his suit, nor is the death of those who became tenants, pending this suit, a reason which should turn to his delay or prejudice; and therefore plead over, and it shall be saved to you &c. — *Parning.* The endorsement of the bill which comes to you out of Parliament, upon which this writ has issued, is to the effect

quele suite vers lenquest, le Roi se demyst a vj. hommes,[1] et les heirs du corps un deux engendres. Et puis lenqueste fust [retourne, par quele trove fut le dreit G. et qe celuy, par qi forfeture &c., unqes ne forfist. Lenqueste fut maunde][2] en Bank le Roi, hors de quel issit un *Venire facias* vers les iij. terre tenantz (qar les autres iij. furent mortz) sils savoient rienz dire pur quei les terres ne duissent estre reseisiz en la mayne le Roi et liverez a G. — *Parn.* Vous avez icy les ij., qe vous dient qe le terce est mort et fust avant le bref purchace; jugement du bref; qar[3] en un *Scire facias*[4] ceo serreit plee; et, en bref de trespas si homme puisse mostrer qun vers qi le bref est porte fust mort avant le bref purchace, tut le bref est abatu, qar il fust tut temps faux; auxi icy.— WILBY. *Non est simile;* qar cestui bref est suy pur le Roi, ou le Roi poet en ceo cas aver reseisi &c. sanz suyte; et, coment qil eit fait une courtesie, nest pas resoun qe ceo chese en delay de sa suyte, nomement qant vostre respons vous est sauf a ceo bref si avant come a un autre; par quei responez, ou nous prendroms la terre en la mayn le Roi. Et jeo pose qe le Roi porte bref de dreit ou deschete vers ij., et lun moert,[5] son bref est assez bon; et ceo bref est le bref le Roi et noun pas de la partie; qar la peticion qil suyst primes au Roi est son original vers le Roi qe adonqes fust tenant, quele nest pas fauxe par la demyse le Roi, pendant sa suyte, ne la mort ces qe sount devenuz tenantz, pendant cele suyte, nest pas resoun qe lui tourne en delay ou prejudice; et pur ceo dites outre, et saufe vous serra &c.—*Parn.* Lendosement[6] de la bille qe vous vient hors de parlement, hors de quel ceste bref est issu, voet qe vous

A.D. 1339.

[1] T., jours.
[2] The words between brackets are not in T.
[3] L. and 25184, *quære.*
[4] si is inserted after *facias* in 25184.
[5] L. and T., demoert.
[6] T., le dosement.

A.D. 1339. that you should call before you those who have been called, and further that you should do right &c.; and now the writ is to the effect that we are to be warned to show wherefore the King shall not seize again, and why the lands shall not be delivered out of his seisin to the party; and thus the writ supposes that we shall have an answer in defence of the land after the King shall have seized, which cannot be; thus the writ is framed out of the due course of law; judgment.—WILLOUGHBY. To this writ you can have an answer, and show wherefore &c., and put forward a release.

Scire Facias.

(32.) § The Bishop of Ely sued to the King by bill in Parliament, showing how the King had granted to his predecessor, by charter, the return of writs in a certain liberty, and afterwards by charter had granted to the Abbot of R. to have the return of writs within the same liberty; and he prayed a remedy. The King commanded the Chancellor that he should cause the parties to come, and that he should inspect their charters, and that, if there was anything in the latter charter to impair the former, the charter should in that point be repealed. Wherefore a *Scire facias* issued &c., and the parties came.—*Parning* took exception to the writ on the ground that it did not issue out of any record. But, notwithstanding this, the writ was adjudged good, because the King's charter is as much of record as a fine, and this *Scire facias* issued in virtue of the charter.

Trespass for beasts taken.

(33.) § Trespass, against three persons, for beasts taken and driven from one county into another.—*Gayneford.* A. tells you that he is Not Guilty; and, as to B. and C., they are the bailiffs of one J. of whom the plaintiff holds by certain services; and for services in arrear they took &c., and drove to a certain place, which

duissez appeller devant vous[1] ces qe sont appellers, et outre qe vous faissez dreit &c.; et ore voet le bref qe nous soioms garniz de[2] mostrer pur quoi le Roi ne reseisera,[3] et pur quei hors de sa seisine eles ne serront liveres a la partie; issi suppose le bref qe nous averoms respons en defens de la terre apres ceo qe le Roi avera seisi, qe ne poet estre; issi le bref conceu hors de ley; jugement. — WILBY. A ceo bref vous poez[4] aver respons, et mostrer par[5] quei &c., et mettre avant[6] relees. A.D. 1339.

(32.)[7] § Levesque de Ely suyst al Roy par bille [en Parlement][8] coment le Roy avoit graunte a son predecessour par chartre retourne de brefs en certeine fraunchise, et pus par chartre il avoit graunte al Abbe de R. davoir retourne de brefs en mesme la fraunchise, et pria remedie. Le Roy maunda al Chaunceler qe il ferroit venir les parties, et qe il veist lour chartres, et, sil yavoit rien en la dreyn chartre en damage de la primere, qe la chartre en cel point fut repelle. Par quei un *Scire facias* issit &c, et les parties vindrent. — *Parn.* chalengea le bref de ceo qe il ne issit hors de nul record, et, *hoc non obstante,* [pur ceo qe le chartre le Roy est auxi bien de recorde come un fyn, et cest *Scire facias* est issu par force de la chartre],[8] le bref feut agarde bon. Scire Facias.

(33.)[7] § Trespas, des avers pris et chace dun counte en un autre, vers iij.[9] — *Gayn.* A. vous dist qil nest pas coupable; et qant a B. et C. ils sont les baillifs un J.[10] de qi le pleintif tient par certeinz serviz; et pur serviz[11] arrere ils pristrent &c., et chacerent a un Trespas des avers pris.

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[1] vous is not in T.
[2] T., pur.
[3] T. and 25184, seisera.
[4] T., poet instead of vous poez.
[5] 25184, matere pur, instead of mostrer par.
[6] avant is not in L.
[7] From T., L., 16560, and 25184.
[8] The words between brackets are in 16560 alone.
[9] 25184, iiij.
[10] T., A.
[11] The words et pur serviz are not in L.

A.D. 1539. is only within the same county where the taking was effected, without doing anything against the peace.—*Pole.* To your cause of avowry we have no need upon this writ to plead; but we will aver our plaint.—SCHARDELOWE. If he did not avow, he would not have the Return.—SCHARSHULLE. He shall never have the Return upon this writ, for the writ is not to the effect that the Sheriff is to make deliverance.—And then SCHARSHULLE asked *Gayneford* of what country he would have the inquest.—*Gayneford.* Of the county in which the writ is brought.—*Pole.* You shall not have it; for the taking is acknowledged, and we have traversed the driving away, which was into the other county.—SCHARSHULLE. It shall not be here; for those of the county to which he supposes the driving to have been made can not know whether they were the same beasts which were taken or not, but those of the county where they were taken can know whether they were driven out of their county or not; wherefore the Inquest shall be there &c. and of that county &c.—And to this WILLOUGHBY agreed.

Detinue of chattels.

(34.) § Detinue of chattels to the value of 100*l.* against an Abbot by a man and his wife, on a bailment, made by the father of the wife when she was under age, of chattels to be delivered to his daughter, when she was of full age, at her will; and they counted that he delivered pots, linen, cloths, and 20*l.* in a bag sealed up &c.—*Pole.* He demands money, which naturally sounds in an action of Debt or Account; judgment of the count.—*Stouford.* We did not count of a loan which sounds in Debt, nor of a receipt of money for profit, which would give an action of Account, but of

certein lieu qest fors deinz mesme le counte ou la prise fut fait, sanz rienz faire contre la pees. — *Pole.* A vostre cause davowerie navoms mester[1] en ceo[2] bref a pleder, mes nous voloms averer nostre pleinte.[3] — SCHD. Sil navowast, il navereit pas retourn. — SCH. Il navera jammes retourn en ceo bref, qar le bref ne voet pas qe le Vicounte face deliveraunce. — Et puis SCH. demanda de *Gayn.* de quele pais il voleit aver lenquest. — *Gayn.* Del counte ou le bref est porte. — [*Pole.* Noun averez, qar la prise est conu, et nous sumes a travers del enchacer qe fust en lautre counte.][4] — SCH. Il ne serra pas icy; qar ceux del counte a quel il suppose la chace estre fait ne poeint saver si[5] mesmes les bestes furent pris ou noun, mes ceux del counte [ou ils furent pris pount saver sils furent enchace hors de lour counte ou noun; par quei la serra lenquest &c., et de cel counte][6] &c.—Et a ceo acorda WILBY. A.D. 1339.

(34.)[7] § Detenue de chateux a la value[8] de c. *li.* vers un Abbe par un homme et sa femme du baille fait par le pere la femme[9] qant ele fust deinz age, a[10] bailler a sa fille, a son pleine age, a sa volunte; et counta qil bailla potz, touwailles, naps, et xx. *li.* en un bagge enseale &c. — *Pole.* Il demande deners, qe soune[11] naturelement en accion de dette ou dacount; jugement de counte.—*Stouf.* Nous ne countasmes pas daprest qe soune en dette, ne de resceite de deners pur profiter, qe dorreit acompt,[12] mes de deners liverez Detenue de chateux.

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[1] T. and 25184, pas.

[2] L., en ceo cas instead of en ceo.

[3] T., bref.

[4] The words between brackets are not in 16560.

[5] T., qe.

[6] The words between brackets are in T. and 16560, but not in L. nor in 25184.

[7] From T., L., and 25184 as far as the point at which the larger type ends.

[8] 25184, valiaunce.

[9] T., la femme le pere, instead of le pere la femme.

[10] T., et.

[11] 25184, sount.

[12] acompt is not in 25184.

A.D. 1339. money delivered in keeping under seal, &c., which could not be changed; and if your house were burnt, that would be an answer. — SCHARDELOWE. Answer over.— *Pole.* We do not detain in manner as he has counted; ready to defend by our law. — *Stouford.* We have counted of the bailment made by another; wherefore, do you intend this to be your answer?

Detinue. § A writ of Detinue of chattels was brought. *Stouford* counted how one J. delivered to the defendant, to the use of the plaintiff, certain chattels of the value of ten marks, and, in particular, certain cloths &c. of which he did not state the price, and ten marks in a bag, to deliver to the plaintiff at her will.— *Pole.* He has counted that J. delivered to the defendant ten marks &c.; so that sounds in Debt; judgment of the count.— SCHARDELOWE. He gave the defendant no permission to take the money out of the bag.—And *Pole* was ousted of the plea.—*Pole.* We do not detain any chattels according to the manner of his count; ready &c. by the defendant's law.—*Stouford.* We have counted of the receipt through another's hand; wherefore, if you wish that to be your answer, we will imparl.—*Pole.* The detinue is here supposed to be by our hand, &c., the receipt also, &c.

Wardship. (35.) § A writ of Wardship of the body was sued against a man and his wife in the 10th year, and they traversed the writ. And the Inquest was taken, on their default, by *Nisi prius,* which passed for the plaintiff and was returned into the Bench; and on the day the wife came and prayed to be received, and was counterpleaded, and she constituted her attorney by writ; and the suit was pending until now.—SCHARDELOWE. The Inquest was taken on the mise between the parties, whereas when the Inquest was to be taken in the country she might have come and have delayed the taking of the Inquest, and she did not come; wherefore she has overstayed her time.—*Trewith.* I say that the Justices would have taken the Inquest, notwithstanding her coming, for they had no warrant to do otherwise.—SCHARDELOWE. You say what is contrary to law; for the other day I stayed the proceeding at *Nisi prius* in a similar case, and so ought they to have done; and if she had come and had been receivable, they would have waited; wherefore

en garde southe le seal &c., qe ne poient estre changez; et si vostre mesoun fust ars &c., ceo serreit respons. —Sch. Dites outre.—*Pole.* Nous ne detenoms pas solonc ceo qil ad counte; prest a defendre par nostre ley.—*Stouf.* Nous avoms counte dautri baille, par quei voletz ceo pur respons? A.D. 1339.

§ Bref[1] de detenue de chatel fut porte. *Stouf.* counta coment un J. bailla a luy certeinz chatels, al oeps le pleintif, pris de x. marcz, nomement certeinz napes, &c., et ne dit mye le pris la, et x. marcz en un bage, a bailler al pleintif[2] a sa volunte. — *Pole.* Il ad counte qe il bailla a luy x. markz &c.; issint soune cel la en un Dette; jugement de counte.—Sch. Il ne luy dona mye conge de prendre les deners hors de bage. —Et fut ouste.—*Pole.* Nous ne detenoms nuls chateux solom ceo qe il ad counte; prest, &c. par sa ley.—*Stouf.* Nous avoms counte la receite par mye autri meyn; par quei, si vous le voillez pur respouns, nous enparleroms. — *Pole.* La detenue si est suppose par nostre meyn, et la resceite, &c. Detenue.

(35.)[3] § Bref de garde du corps fust suy vers un homme et sa femme lan xme,[4] qe traversont le bref. Et enquest fust pris par lour defaute par *Nisi prius,* qe passa pur le pleintif et retourne en Bank; a quel jour la femme vynt et pria destre resceu, et fust countreplede, et par bref fist son attourne; et pendi tanqore. — Sch. Lenquest fust prise a mise[5] des parties, ou qant lenquest fust a prendre en pais ele poait aver venue et aver delaye la prise del enquest, et ne vynt[6] pas; par quei ele ad sursis son temps.—*Trew.* Jeo die qe le Justices ussent[7] pris lenquest *non obstante* sa venue, qar il navoit autre garrant.—Sch. Vous dites contre ley; qar lautre jour[8] jeo sursis a *Nisi prius* en autiel cas, et issi dust il aver fait; et si ele ust venu [et ust este resceivable, ils ussent attendu];[9] par Garde.

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[1] This report of the case is from 16560 alone.

[2] MS. plee.

[3] From T., L., and 25184.

[4] T., xxme.

[5] T., visc.

[6] T. fist.

[7] 25184, avoient.

[8] T., hure.

[9] The words between brackets are in T., but not in L. nor in 25184.

A.D. 1339. there is no great help for you in this matter. — And afterwards, in Trinity term, *Gayneford* said that the count was to the effect that the infant's ancestor held of the plaintiff 4 acres of land and 100 acres of moor.— The defendant traversed and said that the ancestor held of him and not of the plaintiff.—And on that they were at issue, whereupon before SCHARSHULLE at *Nisi prius* it was found by the Inquest that parcel of the tenements was held of the plaintiff, and nothing was enquired concerning the rest, though it may be that the rest was held of the defendant, in which case he ought to have enquired concerning the priority ; wherefore the Inquest was not so fully examined that you can give judgment on their verdict. — SCHARDELOWE. Enquiry shall never be made of the priority without plea of the parties ; and I say that the issue was solely whether the ancestor &c. held of the plaintiff or not ; and, if it was found that the least part was holden of him, that was sufficient for the wardship of the body.—To this the COURT agreed. Wherefore *Gayneford*, for the wife, prayed to be received.

Note concerning Trespass.

(36.) § A bill of Trespass for battery committed upon a co-monk was brought by his Abbot and himself in the words "to their damage"; and exception was taken to it, because it supposed damage to the co-monk, where he can not be party to a judgment to recover damages ; but a feme covert can, for she shall have execution after her husband's death. And it was adjudged good.

Trespass.

§ A bill of Trespass was sued in the King's Bench by an Abbot and his co-monk in respect of battery committed upon the co-monk, and the bill was in the words *ad damnum ipsorum* ; and exception was taken to the bill, and it was adjudged good by WILLOUGHBY.

quei il ne ad pas grant counfort en la matere. — *Et postea termino Trinitatis, Gayn.* dit qe le counte voleit qe launcestre lenfant tynt del pleintif iiij. acres de terre[1] et c. acres de more.—Le defendant traversa et dit qe launcestre tynt de lui et noun pas del pleintif.—Et sur ceo furent a issu, ou devant SCH. par *Nisi prius* par enquest fust trove qe parcel des tenementz furent tenuz del pleintif, et del remenant rien est enquis, ou poet estre qe le remenant fust tenu del defendant, en quel cas il dust aver enquis de la priorite; par quei lenquest nest pas pleinement examine, issint qe vous puissez sur verdist faire jugement. — SCHD. Jammes sanz plee des parties nenquera homme de priorite; et jeo die qe lissu fust soulement le quel launcestre &c. tient del pleintif ou noun; et si trove soit qe la meyndre partie soit tenu de lui assetz suffit pur la garde du corps.—*Ad quod* CURIA *concordat.*[2] Par quei *Gayn.* pria pur la femme destre resceu. A.D. 1339.

(36.)[3] § Bille[4] de Trespas de baterie fait au commoigne porte par son Abbe et luy,[5] *ad damnum ipsorum;* et fust chalenge, de ceo qil supposa le damage de commoigne, ou il ne poet estre partie au jugement de recoverir damages; mes femme coverte poet, qar ele avera execucion apres la mort son baron. Et fust agarde bon. Nota de Trespas. [Fitz. *Briefe,* 261.]

§ Une[6] bille de trespas fut suy en Baunk le Roy par un Abbe et soun comoigne de baterie fait al comoigne, et le bille voleit *ad damnum ipsorum;* et la bille fut chalenge, et agarde bon par WILBY. Transgressio.

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[1] The words de terre are not in T.

[2] 25184, *concessit.*

[3] From T., L., and 25184 as far as the point at which the larger type ends.

[4] 25184, bref.

[5] T. and L., lui et son Abbe, instead of son Abbe et luy.

[6] This report of the case is from 16560 alone.

A.D. 1339.

Account in the case of an infant.

(37.) § Account for a receipt, where the issue was received that the defendant was under age at the time of the receipt; ready &c.—And the other side said the contrary.

Dower.

(38.) § Note that upon a writ of Dower the tenant vouched the heir of the husband, and the vouchee counterpleaded the warranty by an issue in the country, and the wife prayed her dower; and she could not have it, notwithstanding the injustice. It would have been otherwise if he had warranted and said that he had nothing by descent, and the tenant had offered to aver that he had assets in another county, in which case the woman would have recovered forthwith; but, if it had been alleged that he had assets in the same county, the judgment would have been conditional &c.

(39.) § Waste, in respect of tenements in Barton. It was alleged that there was no such vill without an addition; upon which issue was joined to the country. It was found by Inquest taken before J. DE INGE that the vill was well named; and he enquired further of the damages without enquiring of the waste; and the Inquest assessed the damages at 100*s.*; and the parties had a day in the Bench. The plaintiff prayed seisin of the land &c.—STONORE. The waste is not found by Inquest nor confessed by the party; wherefore we can not go to judgment.—INGE. The party raised a point concerning the land in opposition to the writ, by his plea, &c.—And afterwards process was made, by accord of the JUSTICES, to enquire anew.—*Quære* whether that which has been once enquired of shall be enquired of again.

Roll amended.

§ Inquest was taken by *Nisi prius* in the country before SIR J. INGE, and in this case he enquired of the damages without enquiring of the waste in certain, that is to say of what thing the waste was committed. And it was adjourned hither into the Bench.—*Rokell*, because the waste was not found in certain,

(37.)[1] § Acompt de resceite, ou lissue fust resceu qe le defendant au temps de la resceite fust deinz age; prest &c.—*Et alii e contra.* A.D. 1339. Acompte denfant.

(38.)[2] § Nota qen Dower le tenant voucha leir le baron, et le vouche contrepleda la garrantie par issue en pais, et la femme pria son dowere; *et non potuit habere, non obstante* meschef; *secus esset* sil ust garranti et ust dist qil navoit rien par descente,[3] et le tenant ust tendu daverer qil ad assetz en autre counte, en quel cas la femme recovereit tantost; mes, si alegge fust qil avoit assetz en mesme le counte, le jugement serra condicionel, &c. Dowere. [Fitz. *Jugement*, 166.]

(39.)[4] § Wast, de tenementz en Bartone. Alegge fust qil yavoit nule tiele ville sanz adjeccion; sur quei pais se joynt. Trove fust par enquest pris devant J. DE INGE qe la ville fust bien nome; et il enquist outre de damages sanz enquerre de wast; et lenquest assist les damages a c. *s.*; et les parties avoient jour en Bank. Le pleintif pria seisine de terre &c.—STONORE. Le wast nest pas trove par enquest ne conu par[5] partie, par quei nous ne poms aler a jugement. —INGE. La partie mist terre contre bref par son plee &c.—Et puis fust proces fait par acord[6] des JUSTICES denquerre de novel. *Quære* si ceo qest enquis serra autrefoitz enquis. [Fitz. *Wast*, 29.]

§ Enqueste[7] fuit pris par le *Nisi prius* en pais devaunt SIRE J. INGE,[8] ou il enquist des damages saunz enquerre del wast en certein, saver de quele chose le wast se fist. Et il fut ajourne cy en Baunk.—*Rokel,* pur ceo qe le wast nest mye en Roule amende.

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[1] From T., L., and 25184. Though placed thus in the three MSS., this is probably a part of No. 2 in the same term.

[2] From T., L., 16560, and 25184.

[3] In 16560 the report ends here.

[4] From T., L., and 25184 as far as the point at which the larger type ends. See pp. 441 and 489 of the volume of Year Books 11 and 12 Edw. 3.

[5] The words conu par are not in T.

[6] 25184, agarde.

[7] This report of the case is from 16560 alone.

[8] MS., Hngh.

A.D. 1339. prayed a new writ to the Sheriff. And the enrolment was as above. And J. DE INGE recorded otherwise; wherefore the roll was amended, &c.

Waste. § A writ of Waste committed in S. was brought in this Court. The tenant said that there was no S. without addition. A *Nisi prius* was granted in the country before SIR J. INGE. It was found by Inquest that there was such a vill without addition. Wherefore he enquired over of the damages without enquiring of the Waste; and the same Inquest assessed them.—And because he did not enquire of the waste an *Alias* writ was granted to enquire of the waste.—*Quære* whether enquiry shall be made thereof by the same Inquest that adjudged the damages.

Dower. (40.) § Dower of the third part of the manor of S. And the view was granted. And before the party raised any objection, *Parning*, after the view, abridged his demand, and excepted a certain part.—*Gayneford.* We tell you that the manor extends into two other vills which are not named; judgment of the writ.—*Parning.* As much as we demand is in the vill named in the writ, and we have made the view of no more; ready &c.—SCHARDELOWE. He takes his objection on your demand, and though you abridge it that is no reason why he should lose his objection.—SCHARSHULLE. It has always been the custom, where the demand is not in the writ, that it may be abridged, and especially before the party has raised any objection to it; and in an Assise of Novel Disseisin before me, after objection by the party, the plaintiff was received to abridge his plaint. And suppose the case that the part excepted had been in another county &c. — SCHARDELOWE. We adjudge the writ to be good, for anything that you have yet said. — *Gayneford.* Now, for the first time has he abridged his demand; wherefore we can not know whether the part excepted be in the vills which are named, or otherwise; wherefore now on this new

certein il pria novel bref a Vicounte. Et lenroulement feut *ut supra.* Et J. DE INGE[1] recorda autrement; pur quey le roulle fut amende &c. A.D. 1339.

§ Bref[2] de Wast fut porte, en cest Court, en S. Le tenaunt dit qe il navoit nul S. saunz adjeccion. Un *Nisi prius* fut graunte en pays devaunt SIRE J. INGE. Trove feut par enqueste qe yavoit un tiel ville saunz adjeccion. Par quei il enquist outre des damages saunz enquere del wast; et retourna lenquest mesme.—Et pur ceo qe il nenquist mye del wast un *sicut alias* fut graunte denquere del wast.—*Quære* sil serra enquis par mesme lenquest qe ajuggea les damages. Wast.

(40.)[3] § Dowere de la terce partie du manere de S.[4] Et la vewe fust grante. Et avant qe partie dona nul chalange, *Parn.* apres la vewe abregga[5] sa demande et fist certein forprise.—*Gayn.* Nous vous dioms qe le manere sestent en ij. autres villes qe ne sont pas nomes; jugement du bref.—*Parn.* Qanqe nous demandoms est en la ville nome el[6] bref, et de nient plus avoms fait la vewe; prest &c.—SCHD. Il prent son chalange de vostre demande, et coment qe vous labregez[7] ceo nest pas resoun qil perde son chalenge.—SCH. Tut temps ad este use en brefs, ou la demande nest pas el bref, qe homme le poet abreger, et nomement avaunt qe la partie leit chalange; et en[9] assise[10] de Novele Disseisine devant moi, apres chalange de partie, le pleintif fust resceu de abreger sa pleinte. Et jeo pose qe la forsprise fust en autre counte &c.—SCH. Nous agardoms le bref bon pur rien qe vous avez uncore dit.—*Gayn.* Ore adeprimes ad il abrege sa demande; par quei nous ne poms saver si le forprise soit en les villes qe sont[11] nomes ou noun; par quei ore a ceste novel Dowere. [Fitz. *Pleint*, 11.] [Fitz. *View*, 102.]

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[1] MS., Hengh.

[2] This report of the case is also from 16560 alone.

[3] From T., L., and 25184 as far as the point at which the larger type ends.

[4] L., B.; 25184, A.

[5] T., brega.

[6] L., et le.

[7] 25184, chalengez.

[8] L. omits avaunt; T. has noun avaunt.

[9] L., ceo est instead of en.

[10] 25184, cas.

[11] T., ne sount pas.

A.D. 1339. demand we pray the view. — *Parning.* You have had the view of the tenements whereof we demand the third part.—And by judgment he was ousted [of the view]; wherefore he traversed the seisin of the husband. — And note that the view of the tenements and the abridgment of the demand made a bad writ good &c.

Dower. § Alice who was the wife of J. de G. brought a writ of Dower, and demanded the third part of the manor of C. (as being in three vills) except ten acres of land in the same manor.—*Gayneford.* At the commencement she made her demand of the third part of the manor without exception, wherefore she shall not now be received to abridge her demand.—HILLARY. She can do so in case the demand is not comprised in the writ, for in an Assise a plaint has been abridged, wherefore say something else.—*Gayneford.* We tell you that the manor in its entirety extends into a fourth vill which is not named in the writ; judgment of the writ. —*Parning.* So much as we demand here is in the vills mentioned in the writ, and of no more was the view had; ready, &c. — SCHARDELOWE. He takes his objection upon your demand, and though you have abridged your demand it is not right that for that reason he should be ousted from his objection.—HILLARY. If the exception was fully set forth in the count, he cannot have any other demand. — And the writ was adjudged good. — And afterwards the tenant traversed the seisin of the husband.—And note that the view and the abridgment of the demand caused a bad writ to be good.

Scire Facias. (41.) § A *Scire facias* was sued against two persons upon a recognisance. The Sheriff returned that one of them was dead, and that the other had nothing whereby notice could be given to him. — *Gayneford.* As the Sheriff has returned that one is dead, we pray a writ against his heir and the tertenants; and we tell you that the other has assets in another county whereby notice could be given to him.—SCHARDELOWE. It is not necessary, for you can have execution against him.— *Gayneford.* He has no assets; wherefore I will not.—I

demande nous demandoms la vewe.—*Parn.* Vous avetz eu la vewe des tenementz dont nous demandoms la terce partie. — Et par agard fust ouste; par quei il traversa la seisine le baron. — *Et nota* qe la vewe des tenementz et labregement de la demande fist un malveys bref bon &c. A.D. 1339.

§ Alice[1] qe fut la femme J. de G. porta bref de dowere, et demanda la terce partie del manoir de C. en iij. villes, forspris x. acres de terre en mesme le manoir.—*Geyn.* Al comencement ele fit sa demande de la terce partie del manere saunz forprise, par quei dabregger ore sa demande il ne serra mye resceu. — Hillar. Si put la ou le demande nest pas compris deinz le bref, qar en assise homme ad abregge sa pleinte, par quei ditez autre chose.—*Geign.* Nous vous dioms qe le manoir enter se estent en la quarte ville qe nest pas nome en le bref; jugement de bref.—*Par.* Qaunque nous demandoms si est en les villes contenuz en le bref, et de nient plus fut la vewe fait; prest, &c.—Sch. Il prent soun chalenge de vostre demande, et coment qe vous avez abregge vostre demande il nest pas resoun pur ceo qe il soit ouste de soun chalenge.—Hillar. Si la forprise fut enter en counte il ne put autre demande aver.—Et le bref fut agarde bon. — Et pus il traversa la seisine le baroun.—*Et nota* qe la vewe et labreggement de la demande fist un mayveys bref qe bon. Dowere.

(41.)[2] § *Scire facias* fust suy hors dune reconisance vers ij. Le Vicounte retourna qe lun fust mort et lautre navoit rienz ou estre garny. — [*Gayn.* Ou le Vicounte retourna que lun fuit mort, nous prioms bref vers soun heir et terre tenaunts, et vous dioms que lautre ad assetz en autre counte ou estre garni.][3]— Sch. Il ne bosoigne pas, qar vous poez aver execucion vers lui.—*Gayn.* Il nad pas assetz, par quei jeo Scire Facias. [Fitz. *Execucion*, 78.]

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[1] This report of the case is from 16560 alone.

[2] From T., L., and 25184.

[3] The words between brackets are not in T.

A.D. 1339. SCHARDELOWE. Well, you pray what is reasonable, and you shall have it, for you can not otherwise have satisfaction.

Dower. (42.) § Dower, against a woman, who said that her husband and she purchased to hold to them and the heirs of her husband; and she prayed aid of her husband's heir.—*Pole.* He of whom you say that you purchased was our husband, whose heir you can vouch; judgment whether aid of her husband's heir &c.—This objection was not allowed.—*Pole.* The purchase was made to them and the heirs of their two bodies begotten, and thus she had a fee &c.; ready &c.—And the other side said the contrary.

Fine. (43.) § Note that a writ of Covenant was brought for certain tenements and three virgates of meadow. — SCHARDELOWE. One shall not have a *Præcipe quod reddat* for a virgate of meadow, nor for a carucate of meadow.—Wherefore the meadow was excepted, and the fine was levied of the rest, &c.

Wardship. (44.) § J. de C. brought a writ of Wardship against one A., and demanded the wardship &c.—*Pole.* You have here Alice who tells you that T., whose estate he who brings the writ has, granted to one J., whose estate the infant has, to hold by fealty and by the services of two shillings for all services; for this reason we pray judgment whether against us, who claim estate in socage, by reason of nurture &c.—The demandant offered to aver his writ. —*Kelshulle.* You shall not get to that in opposition to the deed of the same person whose estate in the seignory you have.—*Parning.* We will aver that he held of us by knight-service; and besides this we are strangers [to the deed] both on one side and on the other; wherefore it seems that the averment is receivable.—*Pole.* Let us suppose that in an avowry I had avowed for so much as he held of me by services, and he wished to put forward the deed, I should never have the averment; and

ne voille pas.—SCH. Bien, vous priez resoun, et vous laverez, qar vous ne poietz autrement avener. A.D. 1339.

(42.)[1] § Dowere vers une femme qe dist qe son baroun et lui purchacerent a eux et a les heirs son baroun; et pria eide del heir son baroun.—*Pole.* Celui de qi vous dites qe vous purchaceastes fut nostre baroun, qi heir vous poez voucher; jugement si eide de lui &c.—*Et non allocatur.*—*Pole.* Le purchas se fist a eux et a les heirs de lour ij. corps engendres, issi avoit ele fee &c.; prest &c.—[*Et alii e contra.*][2] Dower.

(43.)[1] § *Nota* qe bref de Covenant fust porte de certeins tenementz *et tribus virgatis prati.*—SCH. Homme navera pas *Præcipe quod reddat unam virgatam prati nec unam carucatam prati.*—Par quei del pree forspris fust fait, et la fine &c. leva del remenant, &c. Finis. [Fitz. *Fynes*, 67.]

(44.)[3] § J. de C. porta bref de Garde vers un A., et demanda la garde &c.—*Pole.* Vous avez cy Alice qe vous dit qe T., qi estat mesme cestuy qe porte le bref ad, graunta a un J., qi estat lenfaunt ad, a tenir par fealte et par les services de ij. *s.* pur touz services; par ceo jugement si devers nous qe clamoms estat en sokage par resoun de norture &c.—Le demandaunt tendy daverer son bref.—*Kels.* A ceo navendrez mye countre le fet mesme cestuy qi estat vous avez en la seignourie.—*Parn.* Nous voloms averer qe il tient de nous par service de chivalere; et estre ceo nous sumes estraunges dune part et dautre; par quei il semble qe laverement est resceivable.—*Pole.* Mettoms en avowere qe jeo avowase par taunt qe il tient de moy par services, et il voleit mettre avaunt le fait, jeo naveray jammes laverement; et, del houre qe cest Garde.

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[1] From T., L., and 25184.

[2] The words between brackets are not in L.

[3] From 16560 alone as far as the point at which the larger type ends.

A.D. 1339. (since this wardship is an incident of the services) no more shall he have it than he would have it in case of avowry.—And afterwards the averment was received &c.

Wardship. § Wardship, against the mother of the infant who claimed wardship in socage and showed a deed by which one whose estate the plaintiff had enfeoffed one whose estate the infant's ancestor had, to hold by a certain service in lieu of all services.—*Kelshulle.* We are, on both sides, strangers to the deed; wherefore we will aver our writ.—SCOT. In such a case as this a general averment has been seen, and also the reverse.—And afterwards the averment was received. And the deed will only be evidence in this case &c.

Præcipe quod reddat. (45.) § *Præcipe quod reddat* brought against one who acknowledged that he was the villein of an Abbot.—*Gayneford.* The tenements are, in this case, of the purchase of the tenant, and, as far as in him lies, he affirms the freehold to be in the Abbot, which is not allowable, on account of the amortization &c. — Notwithstanding this, SCOT abated the writ.

Account. (46.) § A writ of Account was brought against two persons. To the *Cape* the Sheriff returned that one of them was dead.—SCHARDELOWE. Seek you a better writ if you will.—And the writ abated.—The contrary opinion prevailed above, in last Michaelmas term.

Dower. (47.) § Dower, where several were vouched in another county, and they made default. The *Cape ad valentiam* issued, and also a writ of extent. On another day no writ was returned, and the vouchees came by attorney, and asked by what the tenant intended to bind them &c. And because they had not a day they were not heard, but the writ of extent issued &c. — *Mallum* (the Clerk) said that at the *Sequatur suo periculo,* if no

garde est incident des services, nient plus navera il qe il navera en cas davowere.—Et pus laverement fut resceu, &c. A.D. 1339.

§ Garde[1] vers la mere lenfant qe clama garde en sokage, et moustra fet par quel un qi estat le pleintif ad feffa un qi estat launcestre lenfant avoit, a tenir par certein service pur touz services.—*Kels.*[2] Nous sumes estrange dune part et dautre al fait, pur quei nous voloms averer nostre bref.—Scot. Homme ad vewe qil ad eu en soun cas averement general, et auxi le revers.—Et puis laverement fust resceu. Et le fet ne serra qe evidence en ceo cas &c.[3] Garde. [Fitz. *Estoppel*, 178.]

(45.)[4] § *Præcipe quod reddat* porte vers un qe se conust estre le villeyn un Abbe.—*Gayn.* Les tenementz sont en ceo cas[5] del purchas le tenant, et quanqe en lui est il afferme le frank tenement en Labbe, qe nest pas suffrable pur la mortisement &c.—*Non obstante* Scot abatist son bref. Præcipe quod reddat. [Fitz. *Briefe*, 262.]

(46.)[6] § Bref dacompte fut porte vers ij. Al *Cape* le Vicounte retourna qun de eux fut mort.—Sch. Querrez vous meillour bref si vous voillez.[7] Et le bref abatist.[8]—*Contrarium videbatur, supra, Michaelis ultimo.* Acompte. [Fitz. *Briefe*, 263.]

(47.)[6] § Dowere, ou plusours furent vouchez en autre counte, qe firent defaute. *Cape ad valentiam* issit, et auxi bref destent. A un autre jour nul bref fust retourne, et les vouchez vindrent par attourne,[9] et demanderent par quei le tenant les voleit lier &c. Et pur ceo qils navoint pas jour[10] ils ne furent pas escotes, mes bref destent issit &c.—*Mallum* (Clerc) dit qe al *Sequatur suo periculo* si nul bref soit retourne Dowere. [Fitz. *Respond*, 83.]

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[1] This report of the case is from T., L., and 25184.

[2] T., *Rokel.*

[3] T. ends thus:—Et le fet ne serra . . . . . dence.

[4] From T., L., and 25184.

[5] The words en ceo cas are in T., but not in L. nor in 25184.

[6] From T., L., 16560, and 25184.

[7] Schardelowe's speech is not in 16560.

[8] This sentence is in 16560 only.

[9] The words par attourne are not in 16560.

[10] 16560, Et pur ceo qe le bref ne fut pas servy.

A.D. 1339. writ be returned, the vouchee shall not be received to warrant (and this he affirmed upon oath) unless the vouchee be in Court in his own person.

Escheat. (48.) § Escheat, for that a bastard died without heir of his body. — *Rokell.* He was mulier; ready &c.— *Kelshulle.* A bastard; ready &c.—And the other side said the contrary.

Dower. (49.) § Dower, where four coheirs were vouched, as heirs of the husband, in the same county. On the day on which the *Cape ad valentiam* was returnable, three of them made default, and as to the fourth the Sheriff returned that she was dead. — HILLARY adjudged that the demandant should recover three parts of her demand against the three; and as to the fourth part *Derworth* revouched the heir of her who was dead.

Note. (50.) § Note that one *Scire facias* can be had upon divers fines or notes.

Quare Impedit. (51.) § *Quare impedit* for John de Stonore against the Prioress of Marlow. And he counted that one Miles de Beauchamp was seised of the manor of Losmere, to which a moiety of the church was appendant, and presented to the moiety &c., and afterwards gave an acre of land with the advowson of the moiety &c. to the present plaintiff John de Stonore, who presented &c., by the resignation of whose presentee the moiety of the church is now vacant. And one William Danvers was seised of the manor of Danvers, to which the advowson of the other moiety was appendant, and presented to the same moiety, &c.; which William Danvers gave one acre of land with the advowson &c. to John de Stonore the plaintiff &c.; and he showed that the latter moiety is now vacant by resignation; thus the plaintiff is seised of both moieties, and so it belongs to him to present to the entire church.[1]—*Parning.* He can not demand any-

[1] Of Little Marlow, as appears by the record.

le vouche ne serra pus resceu de garrantir[1] (*et hoc affirmavit juramento*) *nisi sit in propria persona.* A.D. 1339 [Fitz. *Attourne*, 74.]

(48.)[2] § Eschete, *co quod bastardus obiit sine herede de se.*—*Rokel.* Il fust moiller; prest &c.—[*Kels.* Bastard; prest &c.][3]—*Et alii e contra.* Eschete.

(49.)[2] § Dower, ou iiij. coheirs furent vouche come heirs le baron en mesme le counte. Al *Cape ad valentiam* retournable les iij. firent defaute, et quant al quarte le Vicounte retourna qele fust mort.—HILL. agarda qe le demandant recovereit les iij. parties de sa demande vers les iij.; et qant al quarte partie, *Derword*[4] revoucha leir celui qest mort. Dowere. [Fitz. *Jugement*, 167.]

(50.)[2] § Nota qe homme poet aver un *Scire facias* hors de divers fynes ou notes. Note. [Fitz. *Scire facias*, 104.]

(51.)[5] § *Quare impedit* pur Johan de Stonore vers la Prioresse de Merlawe.[6] Et counta qun M. de Beauchamp[7] fust seisi du manere de Losmere,[8] a quei la moite del eglise fust appendant, et presenta a la moite &c., et puis dona une acre de terre ove lavowesoun de la moite &c. a J. qore se pleint, qe presenta &c., par qi resignement la moite del eglise est ore voide. Et un William Danvers[9] fust seisi du manere de Danvers,[10] a qi lavowesoun del autre moite fuit appendant, et presenta a mesme la moite &c., quel W.[9] dona une acre de terre ove lavowesoun &c., a J. pleintif &c.; et mostra qe cele moite est ore voide par resignement; issi est il seisi de lun et de lautre, issi appent a lui a presenter al eglise entier &c.—*Parn.* Il ne poet rien demander, qar par ceo fait il nous Quare Impedit.

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[1] The report ends here in 16560.

[2] From T., L., and 25184.

[3] The words between brackets are not in 25184.

[4] 25184, il.

[5] From T., L. and 25184, corrected by the record (*Placita de Banco*, Easter, 13 Edw. 3, R° 307).

[6] T., L., and 25184, N.

[7] T., L., and 25184, A.

[8] T., L., and 25184, B.

[9] T., L., and 25184, G.

[10] T. and 25184, A.; L., B.

A.D. 1339. thing; for by this deed he, by license from the King, enfeoffed us of the same advowson to hold to us and our successors to our own use. And he showed the deed of the Ordinary for the appropriation and consolidation &c.—*Stouford.* We can not deny it, saving to us the nomination[1] to the vicarage on every vacancy according to the purport of the deed. — SCHARDELOWE. Take nothing by your writ, and be in mercy.

Quare Impedit.

(52.) § A. who was the wife of Thomas Bardolf brought a *Quare impedit* against the Master of the Scholars &c. of Cambridge, and two other persons, and counted how that one T. was seised of a manor to which the advowson was appendant, and presented &c., and that he held it by knight-service of her husband, and afterwards by alienation conveyed the manor to B., who attorned to her husband for his services. After the death of her husband those services were assigned to her in dower, and he (B.) on the assignment attorned and died in her fealty, after whose death, by reason of the non-age of the heir, she was seised of the manor in name of wardship, and so it belongs to her &c.—*Parning.* It is very true that T. presented; but we tell you that he was not then seised of the manor; and we tell you that T. gave the advowson to one J. and his heirs, and afterwards by fine released to him and his heirs; and this J. enfeoffed us and several other persons (whom *Parning* named) of the advowson; and so we are seised of the advowson; judgment; and we pray a writ to the Bishop.—*Gayneford.* They have not denied the append-

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[1] According to the Prioress's plea, in the record, it had been agreed that the Prioress and nuns and their successors were to *present* to the vicarage (after the appropriation) upon the *nomination* of Stonore and his heirs.

feffa, et par conge du Roi, de mesme lavowesoun a tenir en propre oeps a nous et a noz successours. Et mostra fet del Ordiner del appropriacion et consolidacion &c. — *Stouf.* Nous ne poms dedire, sauf a nous la denominacion a la vicarie a chescune voidance solonc purport du fet. — SCHD. Preignez rien par vostre bref, et soiez en la mercye. A.D. 1339.

(52.)[1] § A. qe fust la femme Thomas Bardolf porta le *Quare impedit* vers le Mestre des escolers &c. de Cauntebrigge [et ij. autres],[2] et conta[3] coment un T. fust seisi dun manoir a quei lavowesoun fut appendaunt,[4] et presenta &c., et le tient par service de chivaler de son baron, et puis par alienacioun conveya la manoir a B., qe attourna a son baron de ses serviz. Apres la mort son baron ces services[5] furent assignes a lui en dower, et il par lassignement sattourna et morust en sa feaute, apres qi mort, par le noun age del heir, ele est seisi du manoir [en noun de garde],[2] issi appent a lui &c. — *Parn.* Bien est verite qe T. presenta; mes vous dioms qil ne fust pas adonqes seisi du manoir; et vous dioms qe T. dona lavowesoun a un J. et ses heirs, et puis par fyne relessa a lui et a ses heirs; quel J. del avowesoun enfeffa nous et plusours autres, queux il noma, issi sumes nous seisi del avowesoun; jugement;[6] et prioms bref al Evesqe. — *Gayn.* Il nount pas dedit

Quare Impedit. [Fitz. *Briefe al Evesque,* 20.]

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[1] From T., L., 16560, and 25184. In the record, *Placita de Banco,* Easter, 13 Ed. 3, Ro. 279, the first named defendant is *Walterus de Thakestede, Magister Aulæ Universitatis,* the ward is the heir of Richard de Buslyngthorpe, and Wrauby the name both of the manor and of the church. The real names of "T.," "B.," and "J.," of the presentee, and of the "plusours autres" also appear.

[2] The words between brackets are not in 16560.

[3] 25184, moustra.

[4] All the MSS. except 16560, "&c.," instead of lavowesoun fut appendaunt.

[5] The words ces services are in T. (interlined) and 16560, but not in L. In 25184 the passage is :— qi services apres la mort soun baroun furent assignes.

[6] jugement is in 16560 alone.

A.D. 1339. ancy &c., nor our seisin of the manor; and as to their statement that T. was not seised of the manor when he presented, we are ready to aver that he was.—*Parning* imparled, and came back, and said that this was not an issue, for it was only taken by way of protestation; and (said he) we demand judgment, since they did not deny the alienation of the advowson, as above, nor that the defendants and others are seised of the advowson in the manner stated; and we pray a writ to the Bishop; for whether T. was seised of the manor when he presented or not is immaterial, for in one case as well as in the other he could equally devest himself.—SCHARSHULLE. That is true.—*Trewith.* He took this for a plea, that T. was not seised of the manor when he presented, for that would defeat the appendancy, which is our title. Wherefore &c. —And afterwards *Trewith* waived the point, and said T. enfeoffed B. of the manor to which &c., before which time J. had nothing, of his gift, in the advowson; ready &c. And *Trewith* said that he would have dared to abide judgment whether the defendants could have had advantage of the feoffment of the advowson, since they did not show a specialty. — *Parning.* Since the feoffment made of the manor, T. was seised of the advowson, and presented, and enfeoffed (as above); ready &c.—*Gayneford.* He did not present after the feoffment of the manor; ready &c.—And the other side said the contrary.—And afterwards the plaintiff was non-suited in Trinity term; wherefore the COURT was in doubt whether the defendants should or should not have, in accordance with the manner in which they made their title for themselves and others not named in the writ, a writ to the Bishop, without mention being made in the judgment of the others who were not named for whom title was made.—ALDEBURGH. I have seen that one who was not party to a Darrein Presentment, where

lappendance &c. ne[1] nostre seisine du manere; et a ceo qils dient qe T. ne fust pas seisi du manoir qant il presenta, prest daverer qe cy. — *Parn.* enparla, et revint, et dit qe ceo nest pas issu, qar ceo ne fust pris forsqe par voie de protestacion; et demandoms jugement, de puis qils ne dedisoient pas la demise del avoesoun *ut supra,* ne qils sont seisi par la manere del avowesoun; et nous prioms bref al Evesqe; qar le quel il fust seisi del manoir [qant il presenta][2] ou noun[3] ceo ne toude ne doune, qar en lun cas et en lautre ouelment se poet il demettre. — SCH. Cest verite. — *Trew.* Il prist ceo pur plee qil ne fust pas seisi del manoir qant il presenta, qar ceo defreit[4] lappendance qest nostre title. Par quei &c. Et puis *Trew.* weyva et dit qe T. lui enfeffa del manoir a quoi &c., avant quel temps J. navoit rienz de son doun en lavowesoun; prest &c.—Et *Trew.* dit qil osast aver demore en jugement sil poait aver eu avantage del feffement del avoesoun, de puis[5] qil ne moustra pas especialte.—*Parn.* Puis le feffement fait du manoir T. fust seisi del avowesoun, et presenta, et feffa, *ut supra;* prest &c.—*Gayn.* Il ne presenta pas puis le feffement du manoir;[6] prest &c. — *Et alii e contra.*[7] — Et puis le pleintif fust nounsuy *termino Trinitatis;* par quei COURT fust en awere si le defendant, solonc ceo qil[8] firent lour[9] title pur eux et autres nient nomes el bref, avereient bref al Evesqe [sanz faire mencion el jugement des autres nient nomes pur quex title fust fait].[10] — ALD. Jeo ay vew qe celui qe ne fust pas partie a un darreyn presentement, ou son dreit fust

A.D. 1339.

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[1] So in 16560. T. and L., en; 25184, et.

[2] The words between brackets are not in 16560.

[3] The words ou noun are not in 25184.

[4] T., destruit; 16560, desr; 25184, durreit.

[5] L., temps; T., plus.

[6] The words du manoir are not in T.

[7] The report ends here in 16560.

[8] T., qe.

[9] lour is not in T.

[10] The words between brackets are in T., but not in L. In 25184 the words ou noun are substituted for them.

A.D. 1339. his right was found together with that of others who were parties, had a writ to the Bishop: for the words of the writ [of Assise of Darrein Presentment] are "what patron "&c."—And afterwards, upon careful consideration it was adjudged that the three defendants named in the writ should have a writ to the Bishop without mention being made in the judgment of the others who were not named for whom title was made. And note that it was said by some that if all, as well those who are not named in the writ as the others for whom title is made, now present in common, this will be adjudged to be only an usurpation, and not by virtue of the judgment.

Scire Facias.

(53.) § A *Scire facias* upon a fine was sued against J.—*Trewith.* You have here John, by guardian, who says that John's father held certain land of the King *in capite,* and died, and that, after his death, the King seized the lands by reason of J.'s nonage, and leased the wardship to one Alice until the full age of the infant; and afterwards Alice on her deathbed devised the same wardship to him who now answers as guardian; so the freehold is in the King's person, and we pray aid.—*Parning.* You yourselves show that the King is not tenant of the freehold.—*Trewith.* But, indeed, he is, for when the King has seized anything he continues to be the freeholder until that thing is sued out of the King's hand, wherefore, though he has leased the wardship to another, the seisin shall still be accounted his, for, whent he infant has come to his full age, the King shall have the issues until the land is sued out of the King's hand.—SCHARDELOWE. The object of the writ is to have execution in respect of the freehold, and you pray him in aid only as one who has nothing by reason of wardship.—And afterwards *Trewith* said:—He was seised of the wardship, and we do not understand that without consulting the King we shall be put to answer.—HILLARY. Your plea might be understood in two senses—one that, inas-

trove entre autres parties avoit bref al Evesqe, qar le bref voet *quis advocatus* &c.—Et puis par bon avisement fust agarde qe les iij. defendants nomes el bref ussent bref al Evesqe sanz faire mencion en le jugement des autres nient nomes pur queux title fust fete. *Et*[1] *nota quod dictum fuit per aliquos* qe si touz, auxi bien ceux qe ne sont pas nomes el bref come les autres pur queux title est fait, presentent ore en comune qe ceo serra ajugge fors purprise et noun pas par force del jugement. A.D. 1339.

(53.)[2] § Un *Scire facias* fut suy vers J. hors dune fyn.—*Trew.* Vous avez cy Johan par gardeyn, qe dit qe le piere tient certein terre de Roy en chef, et morust, apres qi mort le Roy seisist les terres par le noun age J. et lessa la garde a une Alice taunqe al age lenfaunt; et pus Alice devisa mesme la garde en son lyt moriaunt a celuy qe respount com gardeyn; issint est le frank tenement en la persone le Roy, et prioms eyde.—*Par.* Vous mesmes moustrez qe le Roy nest pas tenaunt de frank tenement. — *Trew.* Si fet, qar qaunt le Roy ad seisi une chose tut temps il demoert frank tenaunt taunqe la chose seit suy hors de la mayn le Roy, qar mesqe il lessa la garde a un autre tut temps il serra acompte sa seisine, qar qaunt lenfaunt est venu a soun plein age le Roy avera les issues taunqe il soit suy hors de la mayn le Roy. — SCH. Il est a avoir execucion de fraunk [tenement], et vous ne priez en eyde mes com celuy qe rien nad par resoun de garde.—Et pus *Trew.* dit qe il fut seisi de la garde &c., et nentendoms mye saunz conceiller al Roy serroms mys a respoundre.—HILLAR. Vostre plee put estre pris a ij. ententes—un par taunt qe lenfaunt est un- Scire Facias.

[1] This concluding sentence is in T. placed before the sentence beginning "Et puis."

[2] From 16560 alone as far as the point at which the larger type ends.

A.D. 1339. much as the infant is still within age, you shall not have execution awarded during his non-age—the other that he shall not be put to answer without consulting the King, &c.

Scire Facias.

§ *Scire facias* upon a fine, for one in remainder, against an infant under age, who answered by guardian and showed how the King was seised of his wardship by reason of his non-age, and gave it to a woman, who devised it to one who now occupies the wardship and is seised;—and so we have nothing until we have sued our lands out of the King's hand, and we pray aid of him.—*Parning.* You are tenant of the freehold against every one who shall demand, and you show that the King has nothing, for he has devested himself in favour of another who is not a party; wherefore we pray execution.—*Trewith.* In a manner the King is seised, for out of his hand the thing must be sued; and if, upon the infant attaining full age, a church were to become vacant, and the thing were not sued out of the King's hand, the King would have the presentation; wherefore we do not think that without consulting the King you will proceed in this plea.

Præcipe quod reddat.

(54.) § *Præcipe quod reddat* against the Warden of a Hospital.—*Gayneford.* We are a religious professed of the Prior of Coventry, and removable at his will; judgment of the writ.—*Pole.* The Prior is patron, and can give the hospital to whomsoever he pleases, and he gave it to you who were a secular chaplain and not professed; ready &c.—SCHARSHULLE. We have nothing to do with his profession; but answer you to the statement that he holds at the will of the Prior.—*Pole.* Tenant of the freehold; ready &c.—And the other side said the contrary.

§ A writ was brought against J.—*Gayneford.* J. tells you that he is one religious of the Prior of C. and was professed in the same house, and has nothing except at the will of the Prior; judgment of the writ.—*Pole.* He is a layman and not professed; ready &c.—ALDEBURGH. That cannot be an issue, for you must answer to what he says—that he has nothing except at the will of the Prior &c.—*Pole.* Tenant of the freehold; ready &c.—And the other side said the contrary.

quore deinz age issint qe duraunt soun noun age vous naverez mye execucion—un altre qe il ne serra mye mys a respoundre saunz conceiller al Roy &c. A.D. 1339.

§ *Scire*[1] *facias* pur un en le remeindre hors dune fyne vers un enfant deinz age, qe respondi par gardein, et moustra coment le Roi fust seisi de sa garde pur soun noun age, et la dona a une femme, la quele devisa a un qore ocupe la garde et est seisi, et issi navoms rien tanqe nous averoms suy hors de la mayn le Roi, et prioms eide de lui.—*Parn.* Vous estes tenant de frank tenement vers chescun qe demandera, et vous moustrez qe le Roi nad rien, qar il sad demys a autre qe nest pas partie; par quei nous prioms execucion.—*Trew.* En manere est le Roi seisi, qar hors de sa mayn covient qe la chose seit suy; et a son plein age si une eglise se voidast, la chose nient suy hors de sa mayn, le Roi avera le presentement; par quei nentendoms pas sanz conseiler[2] au Roi qe vous voillez aler[3] avant en cest plee. Scire Facias.

(54.)[4] § *Præcipe quod reddat* vers gardein dun hospital.—*Gayn.* Nous sumes convers et profes le Priour de Coventre, et remuable a sa volunte; jugement du bref.—*Pole.* Le Priour est patron, et durra le Hospital a qi qe lui plest, et il le dona a vous qe fustes chapleyn seculer nient profes; prest &c.—Sch. Nous navoms qe faire de sa profession; mes responez a ceo qil dit qil tient a la volunte le Priour.—*Pole.* Tenant de frank tenement; prest &c.—*Et alii e contra.* Præcipe quod reddat. [Fitz. *Nonhabilite*, 7.]

§ Bref[5] fut porte vers J.—*Geyn:* J. vous dit qe il est convers le Priour de C., et fut professe en mesme la mesoun, et nad rien sinoun a la volunte le Priour; jugement de bref.—*Pole.* Il est lais homme et nient profes; prest &c.—Ald. Ceo ne put estre issue, qar il covent qe vous respoignez a ceo qe il dit qe il nad rien si noun a la volunte le Priour &c.—*Pole.* Tenaunt del fraunc tenement; prest &c.—*Et alii e contra.*

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[1] This report of the case is from T., L., and 25184.

[2] 25184, parler.

[3] T., alez instead of voillez aler.

[4] From T., L., and 25184 as far as the point at which the larger type ends.

[5] This report of the case is from 16560 alone.

A.D. 1339. Quare Impedit.

(55.) § *Quare impedit* (where they had a day by the *Pone per vadios*) against the Bishop of Exeter and others who did not come; and the Bishop disclaimed interest in the advowson except as to institution and deprival, and that which pertains to the Ordinary; and we demand judgment whether the writ lies against him.—*Parning.* We will aver that you have disturbed us, to which you do not answer; judgment; and we pray our damages.—*Pole.* You shall not be received to aver disturbance generally against the Ordinary as against any other person, for it pertains to him in a manner to effect a disturbance; for if another person raises a dispute about the presentation, he ought not to receive that person's presentee. And, Sir, according to the writ which is now brought, it is sufficiently proved by the plaintiff's suit that the other who is named in this writ has raised a dispute; wherefore he can not be received to aver the disturbance generally.—*Parning.* No law compels me to count against the Ordinary a count different from that against any other person, and by this count I have made him a disturber, to which he does not answer; judgment.—*Pole.* We tell you that others presented, so that we could not receive his presentee; and we have not disturbed in any other way: ready &c.—*Parning.* You have disturbed us, ready &c. —And on his part he had the general averment, for that which the Ordinary acknowledged is not a disturbance in law. And it was said that he should have a writ to the Bishop, "notwithstanding the disclaimer of

(55.)[1] § *Quare impedit*, ou ils avoyent jour par *Pone per vadios*, vers Levesqe Dexcestre et autres qe ne vindrent pas; et Levesqe desclama en lavowesoun[2] sauf institucion et destitucion et ceo qapent a Ordiner. Et demandoms jugement si le bref vers lui igise. — *Parn.* Nous voloms averer qe vous nous avetz destourbe, a quei vous ne responez pas; jugement; [et prioms noz damages].[3]—*Pole.* Vous ne serrez pas resceu daverer sur Ordiner generalment destourbance come sur autre persone, qar il appent a lui en manere de mettre destourbance; qar si autre met debat, il ne deit pas resceivere son presente. Et, Sire, par le bref qest ore porte est assetz prove par sa suyte qe lautre qest nome en cest bref ad mys debat; par quei generalment daverer le destourbance il ne poet estre resceu. —*Parn.* Nule ley me met de counter autre count vers Ordiner qe vers autre persone,[4] et par count si lay[5] jeo fait destourbour, a quei il ne respond pas; jugement.—*Pole.* Nous vous dioms qe autres presenterent, issi qe nous ne poames resceiver son presente, et autrement navoms pas destourbe; prest &c. — *Parn.* Vous nous avez destourbe; prest &c. — Et de sa parte il avoit laverement general, qar ceo nest pas destourbance en ley qe Lordiner conisast. Et fust dit qil avereit bref al Evesqe *non obstante reclamatione Episcopi;*

A.D. 1339. Quare Impedit. [Fitz. *Brefe al Evesque*, 21.]

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[1] From T., L., 16560, and 25184. In 16560 the report commences thus :—" *Quare Impedit* fut porte " vers Levesqe de Ely.—*Pole.* Il " ne cleyme rien en lavowesoun " si noun com Ordinare de lieu; " jugement si tiel bref vers luy " gise. — *Geyn.* Vous navez mye " dedit la destourbaunce quele est " cause de nostre accion; jugement; et prioms bref al Evesque. " —HILLAR. Coment devoms saver " de la destourbance. — *Parn.* Il " mesme ad pris delaiis par essone. " —*Pole.* Vous ne serrez resceu " daverer," &c. as above. It was the Bishop of Exeter (not of Ely) against whom the action was brought, as appears by the record *Placita de Banco*, Easter, 13 Edw. 3, R° 310.

[2] T. and L., lavowerie.

[3] The words between brackets are not in 25184.

[4] T., L., and 25184, homme.

[5] L., lei; 16560, lavez, instead of lay jeo.

A.D. 1339. "the Bishop"; and yet the other named with him is as yet only at the Grand Distress, and can come and show that he should have, upon this original, a writ to the Bishop. See (concerning this subject) the contrary, in Hilary term in the 7th year,[1] in the case of the Abbot of Newenham, where the plaintiff against certain persons could not have a writ to the Bishop by reason of this possibility, where the others made default. But note the difference; for in this case the Bishop disclaimed, and in the other case the party against whom the writ was demanded made default, and the others who were named could have come afterwards and shown how it belonged to them to present, and saved the presentation to themselves and to him who made default; but to the Bishop who had disclaimed no right could be saved in opposition to his disclaimer. And note that in a *Quare impedit,* although the defendant come by the Grand Distress, he shall be received to aver that he has not disturbed.

Formedon in the Descender.

(56.) § Note that a writ of Formedon abated after view because the words of the writ were "and which, "after the death of [those to whom the land was given], "ought to descend to the demandant as to cousin and "heir," and [the demandant] did not show in his writ how cousin through any intermediate person &c.

(57.) § *Parning* said that, if a son endow his wife *ex assensu patris,* this endowment is defeated after the

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[1] See Year Books, Hilary Term, 7 Edw. 3, No. 8. The Abbot of Newenham was plaintiff, and the Dean and Chapter of York, and John Giffard, clerk, and Thomas de Waleis, clerk, were defendants. This is the case to which reference is made at p. 236 of the present volume. See also p. 282.

et uncore lautre nome ovesqe lui est uncore fors a la grant destresse, et purra venir et moustrer qil avereit a cest original bref al Evesqe. *Quære, de tali materia, contrarium,*[1] *Hillarii vij°*, Labbe de Newenham, ou le pleintif vers ascuns ne poet aver bref al Evesqe pur cest[2] possibilite [la ou les autres firent defaute].[3] *Sed nota diversitatem;* qar en cest cas Levesqe desclama, et en lautre cas la partie fist defaute vers qi bref fust demande,[4] et les autres qe furent nomes poant apres venir et moustrer coment a eux attient a presenter, et sauver a eux et a lui qe fit defaute le presentement; mes al Evesqe qad[5] desclame ne poet nul dreit estre sauve contre son desclamer. *Et*[6] *nota* qen un *Quare impedit,* coment qe le defendant viegne par le grant destresse, il serra resceu daverer qil nad pas destourbe.[7]

A.D. 1339.

[Fitz. *Estoppel,* 179.]

(56.)[8] § Nota[9] qe bref de fourme de doun abati apres la vewe pur ceo qe le bref voleit *Et quæ post mortem* ceux a queux la terre fut done al demandant come a cosyn et heire descendre deit, et ne moustra mye coment cosyn en son bref par mette persone &c.

Fourme de doun en le Descendre.

(57.) § *Parn.* dit, si le fitz dowe sa femme del assent soun pere, apres le fitz soit seisi del heritage

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[1] *contrarium* is in T. alone; *supra* is substituted in L.

[2] cest is not in T.

[3] The words between brackets are in 16560 alone.

[4] 16560, porte.

[5] T., qe.

[6] This last sentence, is in L. transferred to Trinity Term; in 16560 it appears in Easter Term, but as a separate note.

[7] This stands as the last report of Easter Term in T. and L. In 25184, the cases which are printed as Nos. 1 and 2 of Trinity Term are added to this as a continuation The record, however, agrees with the arrangement in T. and L., ending in Easter Term with so much as relates to the Bishop's disclaimer. There is a separate enrolment of another part of the case in Trinity Term.

[8] This and the whole of the subsequent reports of this term are from 16560 alone.

[9] It is possible that this is a note upon the case reported in other MSS. as of the following Trinity Term (No. 50).

A.D. 1339. son becomes seised of the inheritance. This is the common opinion of nearly all; for she shall elect to have either common dower or this; but when she has elected to have the one she is precluded from accepting the other out of any parcel. This is a matter which was touched in an execution upon a recognisance made to the testator whose executors sued. In this case a woman alleged that she held parcel in dower *de assensu patris* of an earlier date, and another parcel in fee tail as of a joint purchase made to the recognisor and her in fee tail, upon which the Inquest was charged.

(58.) § A man came to the bar and said that he had made certain persons his attorneys, and prayed the Court (even though the writ should have come to them) to remove the same persons, because they ought not to act in that capacity.—STONORE. We shall do that which the law wills. Go, and farewell, &c.

Protection. (59.) § A writ was brought against a woman. The woman said that she was tenant for term of life—the reversion being to John son and heir of John de Beauplent—and prayed aid of him. The summons issued &c., and on the day one came and put forward a protection for John de Beauplent.—*Trewith.* The protection is not in accordance with the first writ. — *Stouford.* We cannot have in the Chancery the form "son and heir in our "protection." But this was denied.

Dower. (60.) § A writ of Dower was brought against a tenant, and the demand was made for the third part of two messuages and of two carucates of land. The tenant vouched to warranty one J., son and heir of the husband, in respect of the two messuages and two carucates of land. He came into Court and asked what the tenant had to bind him to warranty &c. And the tenant put forward a deed in which were mentioned two messuages and one carucate of land, but the vouchee denied

qe cel dowement est defait. *Ad omnes est communis opinio;* qar ele elirra comune dower ou cel; mes qaunt ele ad elieu lun de nul parcelle ele est forclos de lautre accepter. Ceo chose qe fut touche en un execucion hors dun conisaunce fait al testatour les executours qe swount, ou un femme alleggea qele tient parcel en dower *de assensu patris* deyne temps, et autre parcel en fee taille come de joint purchace fait al reconisour et ly en fee taille, sour quei lenquest fut charge. A.D. 1339.

(58.) § Un homme vynt a la barre et dit qe il avoit fait certeinz persones ses attournes, et pria a la Court, mesqe bref lour vient, de remuer mesmes ceux, qar il nel dusent faire.—STONORE.[1] Nous ferroms ceo qe ley voet. Alez adieux &c.

(59.) § Bref fut porte vers une femme. La femme dit qele tient a terme de vie, la reversion a Johan fitz et heir Johan de Beauplent,[2] et prie eyde de luy. Le somons issit &c., a quel jour un vient et mist avaunt proteccion pur Johan de Beauplent. — *Trew.* La proteccion nest mye acordaunt al primer. — *Stouf.* Nous ne poms aver en nostre proteccion fitz et heir en la Chauncellerie. *Quod fuit negatum.* Proteccion.

(60.) § Bref de dowere fut porte vers un tenaunt, et fit sa demande de terce partie de ij. myes et de ij. carues de terre. Le tenaunt voucha a garraunt un J., fitz et heir le baroun, de les ij. myes et ij. carues de terre. Il vint en Court et demanda ceo qe il avoit de luy lier &c. Et il myst avaunt fait qe parla de ij. mes et un carue de terre, mes il [dedit] qe il feu- Dowere.

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[1] MS., *Stouf.*

[2] This name is doubtful. There appears to be, in the MS., a mark of abbreviation through the letter l.

A.D. 1339. that they were the same tenements as those demanded against the tenant. — *Pole.* He has vouched us, &c., in respect of two messuages and two carucates &c., and in the deed by which he would bind us only two messuages and one carucate of landare mentioned; wherefore, as to the rest, we pray to be discharged, and, as to what is comprised in the deed, nothing passed &c. — *Gayneford.* We have said that these are the same tenements, wherefore it seems that you ought to warrant with respect to the whole; and you have said that nothing passed, and so that goes to the avoidance of the whole.—*Pole.* At the beginning, when you vouched to warranty, you ought to have vouched according to the specialty, and, since you did not do so, we deny the warranty with respect to the rest which is not comprised in the specialty.

Fine. (61.) § A fine was levied in the country before SIR J. INGE, and he who was to have rendered was within age, but Sir J. Inge did not know the truth, wherefore he did not receive the fine conditionally. Now here in this Court, when the fine was to have been engrossed, he who rendered came, and the COURT was made aware that he was within age, and the fine was found, and Sir J. Inge was blamed in this matter.

Annuity. (62.) § A man recovered an annuity, and the arrears, but not damages, because he did not pray them. And he was not amerced because he came on the first day &c.

Reversion granted. (63.) § J. de C. granted the reversion of certain tenements, which Alice de C. and Margery her daughter hold, in a certain vill, to the Prior of Barnwell, and afterwards there were certain covenants between them to the effect that, if the woman or her daughter did not come on a certain day to attorn, they should be held bound to the Prior in ten pounds. The note of

rent mesmes les tenementz qe feürent demandez vers luy. — *Pole.* Il nous ad vouche &c. de ij. mies et de ij. carues &c., et le fait par quel il nous voet lier ne parle forsqe de ij. mies et dun carue de terre; par quei qaunt al remenant nous prioms estre descharge, et qaunt a ceo qest compris en le fet rien ne passa &c. — *Geyn.* Nous avoms dit qe ceo sount mesmes les tenements, par quei il semble qe vous devez garrantir de tut; et vous avez dit qe rien ne passa, issint est il en voidaunce de tut.—*Pole.* Al comencement, qaunt vouchastes a garraunt, vous dussez aver vouche acordaunt al especialte, et, del houre qe vous le ne feistez mye, nous dedioms del remenant qe nest mye compris en lespecialte garraunti. A.D. 1339.

(61.) § Un fyn fut leve en pais devaunt SIRE [J.] INGE, et celuy qe dust aver rendu fut deinz age, mes il ne savoit mye la verite, par quei il ne resceut la fyn sour condicion. Ore si en cest Court, qaunt la fyn dust aver este engrosse, celuy qe rendy vient, et fut avis a la COURT qe il fut denz age, et la fyn fut trove, et Sir J. Inge si fut blame. Finis.

(62.) § Un homme recoveri un annuite, et les arrerages, et ne mye les damages, pur ceo qe il ne pria mye. Et il ne fut pas amercie pur ceo qe il vient al primer jour, &c. Annuite.

(63.) § J. de C. graunta la reversion de certeinz tenementz, qe Alice de C. et Margerie sa fille teignent en certein ville, al Priour de Berenewell, et pus il yavoit certeinz covenauntz entre eux issint qe si la femme ou sa fille ne venisent certein jour dattourner qe eux serroient tenuz al Priour en x. *li.* La note fut fait par Reversion graunte.

A.D. 1339. the fine by which the reversion was granted was made, so that the woman and her daughter came into Court by warning from the Prior but not by writ, and they were [ready] to perform the condition and to attorn if the Court would permit it. And because the COURT was aware that the daughter was within age, it would consider, &c.

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quel la reversion fut graunte issint qe la femme et sa fille vindrent en Court par garnissement le Priour mes ne mye par bref, et furent de parfourner la condicion et dattourner si la Court voleit soeffrer. Et, pur ceo qe la COURT savoit qe la fille fut deinz age, il avisereit, &c. A.D. 1339.

TRINITY TERM

IN THE THIRTEENTH YEAR OF
THE REIGN OF KING EDWARD THE THIRD
AFTER THE CONQUEST.

TRINITY TERM IN THE THIRTEENTH YEAR OF THE REIGN OF KING EDWARD THE THIRD AFTER THE CONQUEST.

A.D. 1339. (1.) § And afterwards in Trinity term one came and the other did not come; and the plaintiff prayed a writ to the Bishop against him who now made default at the return of the Grand Distress; and he had it. (The contrary was expressly decided above, in the seventh year.)[1] And he counted how that one J. was seised of the manor to which the advowson was appendant, and presented, and that from him it descended to three daughters &c. who made partition of the manor, and that an agreement was afterwards made between them to the effect that two of the sisters should have the first presentation, and E. the third sister should have the second presentation, and that afterwards the two should have two presentations, and that so interchangeably the two and their heirs should have two presentations, and E. and her heirs should have the third presentation, for ever. And he said that he purchased E.'s purparty of the manor, to which manor the advowson was appendant, and then the church became vacant by the death of the presentee of the common ancestor; whereupon a dispute

[1] In the case of the Abbot of Newenham v. the Dean and Chapter of York, and others. See p. 272.

DE TERMINO TRINITATIS ANNO REGNI REGIS EDWARDI TERTII A CONQUESTU TERTIO-DECIMO.[1]

(1.)[2] § *Et postea termino Trinitatis* lun vient et lautre ne vient pas; et le pleintif pria bref al Evesqe vers celui qore fait defaute a la grant destresse retourne; *et habuit.* (*Contrarium supra expresse anno septimo.*) Et il counta coment un J. fust seisi del manoir a quei lavoesoun appendoit,[3] et presenta, et de lui descendi a iij. filles &c., qe firent purpartie del manoir, et puis entre queles composicion se prist qe les ij. soers avereint le primer presentement, et E. la terce soere le secunde presentement, et puis les ij. avereint ij. presentements, et ensi[4] entrechangeablement les ij. et lour heirs les ij. presentements, et E. et ses heirs le terce[5] presentement, a touz jours. Et dit qil purchacea la purpartie E. del manoir, a quel manoir lavoesoun fust appendant, et puis leglise se voida par la mort le presente le comune auncestre, sour[6] quei

A.D. 1339

[Fitz. *Briefe al Evesque,* 21; *Quare impedit,* 58.]

[1] The reports of this term are from the Temple MS., the Lincoln's Inn MS., and the Additional MSS. in the British Museum numbered respectively 16560 and 25184.

[2] From T., L., and 25184. See case No. 55 in the preceding Easter Term, and foot note 7, p. 273. This portion of the case corresponds, in the main, with the record *Placita de Banco,* Trinity, 13 Ed. 3, R° 303. The parties were Adam de Helygan v. Richard de Stapeldon and others. The church was that of "Mahynyet" in Cornwall, the advowson of which was alleged to be appendant to the manor of "Tregilla." The descent was from Adam de Tregilla to his daughters Emma, Isabel, and Joan, and from Isabel to Adam Doygnel, her son. Partition was made between Adam Doygnel, Emma, and Joan. Emma gave her purparty to Adam de Helygan. Richard confessed Helygan's right to present in turn; and judgment was accordingly given against him. According to the Year Book (p. 292) judgment appears to have been given against another defendant after verdict.

[3] T., fust apendaunt.

[4] L. and 25184, issi.

[5] 25184, secunde.

[6] T., par.

A.D. 1339. arose as to the presentation. Wherefore the two sisters, in the names of themselves and of their sister E., brought a *Quare impedit,* and E. was summoned and severed. And the two counted against him who is now plaintiff; and he alleged the agreement but could not deny that it then belonged to them to present, saving to him his turn; and they on their part could not deny the agreement; wherefore they presented &c., by the death of whose presentee the church is now vacant, and so it belongs to him to present.—*Pole.* You see plainly how he does not make himself privy to the agreement, nor does he make himself purchaser of the advowson; but he proves that by the agreement the advowson was severed from the manor, of the third part of which manor he makes himself purchaser; and we do not understand that he ought to be received to such a declaration. — *Gayneford.* Agreement between parceners does not prove an advowson to be in gross, nor make it in gross if it was appendant before.—*Pole.* If the agreement be made in accordance with common law, each will have her turn severally, and that does not defeat the appendancy; but if the agreement be out of the common course of law, as it is in our case, that will make the advowson to be in gross; for if three manors descend to three parceners, and her manor be allotted to each, if an agreement be made between them to present in turn to a church which is appendant to one of the manors, the advowson is severed by the agreement. — *Stouford.* By his count he first makes the advowson to be appendant &c., and makes himself purchaser of a purparty of the manor to which &c., and afterwards he speaks of the agreement, and in the conclusion of his count he does not express in certain terms whether it belongs to him to present because he is seised of the purparty or by force of the agreement;

debat surdi del presentement. Par quei les ij. soers, A.D. 1339.
en lour noun et le noun E. lour soere, porterent *Quare impedit,* et E. fust somons et severe. Et les ij.[1] counterent[2] vers celui qest ore pleintif, qe allegge la composicion, qe ne poait dedire,[3] [qe a eux apendi adonqes a presenter sauf a lui son tourn; et eux arrere ne poaint dedire][4] la composicion, par quei il presenterent &c., par qi mort leglise est ore voide, issint apent il a lui a presenter.—*Pole.* Vous veez bien coment il se fait pas prive a la composicion, ne il se fait pas purchaceour del avowesoun, mes il prove qe par la composicion lavoesoun fust severe del manoir, de[5] la terce partie de quel manoir il se fait purchaceour;[6] et nentendoms pas qe a tiele demostrance deive est resceu.—*Gayn.* Composicion entre parceners ne prove pas ne ne fait une avowesoun estre gros si ele fust appendaunt devant.—*Pole.* Si la composicion soit fait de comune dreit,[7] chescun severalment avera son tourn, et[8] ceo ne defait pas lappendance; mes si la composicion soit fait hors de comune cours,[9] come est en nostre cas, ceo fra lavoesoun un gros; qar si iij. manoirs descendent a iij. parceners, et a chescun soit son manoir alote, si composicion soit fait entre eux de presenter par tourn a une eglise qest appendaunt a un des manoirs, lavoesoun par composicion est severe. —*Stouf.* Primes par son count il fait lavowesoun appendant &c., et ceo fait purchaceour dune purpartie del manoir a quei &c., et puis parle de la composicion, et en la conclusioun de son counte il ne determine pas en certein le quel pur ceo qil est seisi de la purpartie a lui appent a presenter ou par force

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[1] L., autres.
[2] T., conustrent.
[3] L., de dreit.
[4] The words between brackets are not in 25184.
[5] In T., dont il tient.
[6] In L. the words del avowesoun are inserted after purchaceour.
[7] In L. qe is inserted after dreit.
[8] et is in L., but not in T. nor in 25184.
[9] 25184, dreit.

A.D. 1339. thus the declaration is non-certain; judgment, &c.—ALDEBURGH. His intent is that by reason of both it belongs to him; for the seisin of the purparty does not prove that on the second voidance it belongs to him to present, without the agreement; wherefore &c.—SCHARSHULLE. When partition is made between parceners of a manor to which an advowson is appendant, they will immediately, without any other agreement, present in turns, and so it has been adjudged; and if then an agreement is made which is contrary to common law, that severs the advowson from the manor.—ALDEBURGH altogether denied that reasoning to be correct.—SCHARSHULLE. It is so in the opinion of some; and, if it be so, then he ought in his count to have concluded differently.—And afterwards the count was adjudged good; and it seemed to them that the advowson, notwithstanding the agreement, remained appendant.—Wherefore *Stouford* said, Whereas he makes himself a title to present as the person who has the estate of E., one of the parceners, and who is seised of her purparty, ready &c. that he is not seised of her purparty.—*Gayneford.* Ready &c. that he is seised of her purparty.—And the other side said the contrary.—*Quære*, if it be found that he is seised of parcel, and has devested himself of parcel, what shall be done?

(2.) § And afterwards, in Michaelmas term, the Inquest came, and was joined between the Bishop and the plaintiff, ready to pass; and the COURT had a suspicion that it was procured, because it came on the first day and from so distant a part of the country; wherefore they were severally examined by the COURT on oath whether they had been procured to come or not; and they said that they had not.—*Stouford.* You ought not to proceed to the taking of this inquest, for there is another named in the writ who has traversed the title of the plaintiff,

de la composicion; issi la demostraunce est en noun certein; jugement &c. — ALD. Il entent qe par toutz deux appent a lui, qar la seisine de la purpartie ne prove pas [1] qe la secunde voidance attient a lui a presenter, sanz la composicion; par quei &c. — SCH. Qant un manoir a qi une avowesoun appent est partie entre parceners, tantost sanz autre composicion, ils presenteront par tourn, et si ad il este ajugge; et si donqes composicion se face qest countre comune dreit, ceo la severe del manoir.—ALD. *negavit omnino istam rationem.*—SCH. Issi est il al entente dascuns; et si *sic,* donque dust il aver conclus autrement en son counte. — Et puis le count fust agarde bon; et lour sembla qe lavowesoun, *non obstante compositione,* demura appendant.—Par quei *Stouf.* dit, La ou il se fait title de presenter [2] come celui qad lestat E., un des parceners, et est seisi de sa purpartie, prest &c. [qil nest pas seisi de sa purpartie.—*Gayn.* Qil est seisi de sa purpartie; prest &c.] [3] — *Et alii e contra.* — *Quære* sil soit trove qil est seisi de parcel, et de parcel [4] sad demys, *quid fiet.* [5] A.D. 1339

(2.) [6] § *Et postea termino Michaelis* [7] vint lenquest, et fust joynt entre Levesqe et le pleintif prest a passer; et COURT avoit suspicioun qele fust procure, purceqe ele vint al primer jour, et de si loigtein [8] pais; par quei ils furent severalement examines de COURT par sermentz sils furent procurez de venir ou noun; et disoient qe noun.—*Stouf.* Vous ne devez aler a la prise de cest enquest, qar il y ad un autre nome el bref, qad traverse le title le pleintif, et possible est [Fitz. *Enquest* 43.]

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[1] 25184, serreit prove, instead of prove pas.

[2] The words de presenter are not in 25184.

[3] The words between brackets are not in L.

[4] The words et de parcel are in T., but not in L. nor in 25184.

[5] Continued in No. 2.

[6] From T., L., and 25184. A continuation of No. 1. See also No. 55 of the previous Easter Term.

[7] T., Trinitatis.

[8] T., loynte.

A.D. 1339. and it is possible that, on his mise, it will be found that the plaintiff has no cause for presenting, and the plaintiff will take nothing by his writ; and it is not fitting that on one and the same original he should recover damages against one, and as against another should take nothing by his writ, but be rebutted from an action.—*Parning.* The Court has awarded the Inquest and granted process; wherefore it ought to form its judgment; and although the Inquest be taken and pass for the plaintiff, still for the reason which you mention the judgment shall wait until the other Inquest shall have passed. And upon a writ of Trespass, one shall plead to the Inquest, and that Inquest shall be taken, although others who are named have not pleaded.—WILLOUGHBY. The reason there is that the plaintiff can have his judgment against one and execution against him if he please; not so here; and it is not fitting that a man should have judgment for himself as for the person who is disturbed, and that upon the same original it should be found, perchance, that he has disturbed another; wherefore it is more in accordance with reason that this Inquest should wait until the other Inquest shall have passed.—STONORE. That can not be; for we can not continue this Inquest which has now come by process until that time, and no harm can happen even though we take it now, for we shall postpone our judgment until the other Inquest shall have passed.—SCHARSHULLE. But, perchance, as it might happen, the taking of this Inquest would serve for nothing, for the reason above. And I say that process against the Inquest by law ought not to have been made until the other Inquest had been taken; and then enquiry of the whole matter might have been made by that Inquest.—And WILLOUGHBY confirmed this, and said that this matter was only accessory to the other Inquest; and in a Crown case when one puts himself on an Inquest as accessory, an Inquest shall not be taken on his mise before the

qa sa myse trove serra qe le pleintif nad pas cause de presenter, et ne prendra rien par son bref;[1] et inconvenient est qa un mesme original il recovereit damages vers un, et vers un autre ne prendreit rien par son bref,[1] mes serroit rebote daccion.—*Parn.* La Court ad agarde lenquest et grante proces; par quei il convent qele forme son jugement; et coment qe lenquest soit pris et passe pur le pleintif, uncore pur la resoun qe vous parlez le jugement attendra tanqe lautre enquest soit passe. Et en bref de trespas un pledra al enquest, et cel enquest serra pris, coment qe autres nomes neient nient pledes.—WILBY. La resoun est la pur ceo qe le pleintif poet aver son jugement vers un et execucion vers lui sil voet; *non sic hic;* et il est inconvenient qe homme eit jugement pur lui come celui qest destourbe, et a mesme loriginal trove soit[2] par cas qil ad destourbe autre; par quei il est plus acordant qe cest enquest demoerge tanqe lautre enquest soit passe.—STONORE. Ceo ne poet estre; qar nous ne poms pas continuer cest enquest qest ore venuz par proces tanqe cel temps, et male ne poiet avenir coment qe nous la preignoms ore, qar nous attendroms de nostre jugement tanqe lautre enquest soit passe.—SCH. Mes par cas, par ceo[3] qe poet avener, la prise de cest enquest serviroit de nient, *causa qua supra.* Et jeo die qe proces vers lenquest par ley ne dust pas aver este fait tanqe lautre enquest ust este pris; et donqes par cel enquest poait tout aver este enquis.—*Et hoc* WILBY *affirmavit,* et dit qe ceste chose nest qe[4] accessorie al autre enquest. Et en cas de Corone celui qe se mette en enquest del accessorie, a sa myse ne serra point enquest pris devant qe lenquest soit passe encontre le principal.—

A.D. 1339.

[1] The words par son bref are not in 25184.

[2] L. and 25184, serra.

[3] The words par ceo are in L., but not in T. nor in 25184.

[4] L., nest pas, T., est, instead of nest qe.

A.D. 1339. Inquest has passed against the principal. — *Parning.* I might in that case elect to have a writ against all in common, or one against each singly; and I think each ought as well to have an answer in one case as in the other, and that the inquests should be taken on their mises equally.—SCHARSHULLE. It is not so.—And note that it was said by SCHARSHULLE and WILLOUGHBY that he ought not to have a writ to the Bishop against the Bishop before the plea against the others has been decided; nor shall he be received to fix a disturbance on the Ordinary by a general averment, as touched upon above. — ALDEBURGH. Suppose that the other, who has traversed the title, dies, still the writ stands against the Bishop, and then this Inquest ought to be taken, and if it pass now out of Court it will be without day. — SCHARSHULLE. If the Court has made process against the Inquest before the proper time, by negligence or misprision, it can return and stay until the time shall come; and the argument is stronger in this case, since in a possible event the taking of the Inquest might serve for nothing. And afterwards he told *Stouford* to plead something else, if he wished, to delay the Inquest, and that this point should be saved to him.—*Stouford.* Besides what we have said, we tell you that these people (of the Inquest) are insufficient, and in particular because the Bishop who is a Peer of the Realm is a party, in which case knights and those of the highest worth shall be on the Inquest; and there is no knight among them; wherefore you ought not to proceed to take the Inquest. — *Parning.* There is no proof that they are insufficient; wherefore &c. And never was an Inquest challenged for want of knights.—STONORE, WILLOUGHBY, and SCHARSHULLE said this challenge is usual, when a Peer of the Realm is a party, either upon an assise or upon an inquest, and it has often happened that

Parn. Jeo poay en cel cas eslire un bref vers touz en comune ou vers chescun un; et jentenk qe chescun deit auxi avant respons aver en lun cas[1] come lautre, et les enquestes prises[2] a lour mises owelment.— SCH. Il nest point issint.—*Et nota* par SCH. et WILBY qil ne dust pas aver[3] bref al Evesqe vers Levesqe[4] avant le plee termine vers les autres; ne par averement general il ne serra point resceu dattacher destourbance sur Lordiner, *ut tangitur supra.* — ALD. Mettez qe lautre qad traverse le title moert, uncore esta le bref vers Levesqe, et donqes covient qe cest enquest soit pris, et si ele passe ore hors de court, ele serra saunz jour. — SCH. Si Court ad fait proces vers lenquest avant sa sesoun,[5] par necligens ou mesprision, ele poet retourner et sourseer tanqe temps vendra; et ceo vaut plus en cest cas, del hour qe par cas qe poet avener la prise del enquest servireit de nient. Et puis il dit a *Stouf.* qil dit autre chose, sil voleit, pur delaier[6] lenquest, et[7] ceste chose lui serreit saufve. — *Stouf.* Ovesqe ceo qe nous avoms dit, vous dioms qe cest gentz sount moyns sufficeantz, et nomement qaunt Levesqe qe est pere de la terre est partie, en quel cas chivalers et les mieux vaillants serront sur lenquest; et il yad nul chivaler; par quei vous ne devez al enquest prendre aler. — *Parn.* Il nest pas prove[8] qils sont meyns suffisanz, par quei,[9] &c. Et pur defaute de chivalers ne fust unqes enquest[10] chalange. — STONORE, WILBY et SCH. disoint qe le chalange[11] est usuel qant pere de la terre est partie, soit ceo en assise soit ceo en enquest, et sovent ad este fait qe assises

A.D. 1339.

[Fitz. *Challenge,* 115.]

[1] The words en lun cas are not in 25184.

[2] 25184, lenquest pris, instead of les enquestes prises.

[3] 25184, aver ew.

[4] The words vers Levesqe are not in 25184.

[5] L., resoun. The word is omitted from 25184.

[6] L., deliverer.

[7] L., a.

[8] L. and T., trove.

[9] The words par quei are not in 25184.

[10] enquest is not in 25184.

[11] T., chivaler.

A.D. 1339. assises and inquests have in such cases been delayed. Wherefore this Inquest went without day; and it was commanded that others should be caused to come.—And afterwards the Inquest was taken between the plaintiff and another of the defendants who pleaded to issue on the seisin of the purparty, as is shown above; and it was found that the plaintiff was seised of E.'s purparty, and that the church was worth 100 marks by the year, and that the time had passed, and that the church was vacant &c.—*Gayneford.* You have here the Inquest between the plaintiff and the Bishop ready to pass. —STONORE. The plaintiff has gained his purpose, for he is to have a writ to the Bishop and his damages on the verdict found &c.; and the Bishop is, in a manner, excused by the same verdict, for it is now of record that he disturbed for a sufficient reason, for his hands were tied whilst there was a dispute between the others; wherefore we will consider before the Inquest be taken; for the taking of the Inquest perchance would serve for nothing. Besides, it is found that the time [of six months] has passed; wherefore you are to recover damages of double a year's value, by Statute,[1] against one; and if the Inquest were taken between you and the Bishop, perchance he would be found to be a disturber, and then you would have your presentation and damages for the half [of a year's value] of the church, which can not be. And it is to be considered, on the other hand, that, if the Bishop can thus escape, there is no lay patron in England who can present.—SCHARSHULLE. That is no mischief; for then he would recover his damages; and I say that in a *Quare impedit* against the Ordinary when he disclaims interest in the advowson, the course of law has always been that the plaintiff should have a writ to the Bishop without affirming any other disturbance in him; for no one ever saw a general

[1] 13 Edw. I. (Westm. 2.), c. 5.

et enquestes en tiel cas furent delaies. Par quei cest enquest ala sanz jour; et comaunde fust de faire venir autres.—Et puis lenquest fust pris entre le[1] pleintif et un autre de defendants qe pleda[2] al issu sur la seisine de la purpartie, *ut patet supra;* et trove fust qe le pleintif fust seisi de la purpartie E., et qe leglise valust c. marcs par an, et qe le temps est passe, et est voide &c.—*Gayn.* Vous avez icy lenquest entre le pleintif et Levesqe prest a passer.—STON. Le pleintif[3] est a son purpos, qar il est daver bref al Evesqe et ses damages sur verdit trove &c.; et Levesqe en[4] manere par[5] mesme le verdit est excuse, qar il est ore de record qil destourba par resoun, qar ses meyns furent lies tanqe le debat fust entre autres;[6] par quei nous aviseroms devant qe lenquest soit pris; qar la prise del enquest servireit de nient par cas. Ovesqe ceo, trove est qe le temps[7] est passe, par quei vous estes a recoverir damages a double par statut vers un; et si lenquest fust pris entre vous et Levesqe,[8] par cas il serra trove destourbour, et donqes averez vostre presentement et damages de la moite del eglise, qe ne poet estre. Et fait a regarder dautre part, si Levesqe issi poet eschaper, qar il ny ad lay patroun en Engleterre qe presentera.—SCH. Ceo nest pas meschief, qar donqes il recovereit ses damages; et jeo die qe la ley ad este tout temps use en *Quare impedit* vers Lordiner qant il descleyme en lavoesoun[9] qe le pleintif avereit bref al Evesqe saunz affermer autre destourbance en lui; qomme nad pas veu general destourbance ne

A.D. 1339.

[Fitz. *Quare impedit*, 58, *ad fin.*]

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[1] L. and T., un.
[2] The words qe pleda are not in T.
[3] L., plee.
[4] T., par.
[5] L. and T., en.
[6] L. and 25184, eux.
[7] 25184, lenquest.
[8] L., lenqueste.
[9] L. and 25184, lavoerie.

A.D. 1339. or special disturbance averred against the Ordinary in a *Quare impedit,* and particularly when he disclaims interest in the advowson; for he can avow the disturbance in many ways which cannot be tried in a *Quare impedit*—as if the presentee be under age, or excommunicated, or under some other disability &c.; but for such disturbance, after having obtained a writ to the Bishop against the defendant, and after the Bishop has refused to receive his presentee, the plaintiff shall bring a *Quare non admisit;* in which case, if the Ordinary can not excuse himself, the plaintiff shall recover damages against him, together with the presentation, no regard being had to the lapse of time.—*Parning.* What if the Ordinary has disturbed me, for which disturbance an action is given to me to recover damages, and afterwards he receives my presentee, so that the *Quare non admisit* does not lie? Shall I be without recovery for the first disturbance? (implying that he would not). And in no other way shall I have an action than by *Quare impedit.* And the Inquest is joined; and, although it was by error, it is proper that you should take the Inquest, for you can not redress your own error.—SCHARSHULLE. If it be wrongly joined, it shall never be taken, so far as we are concerned.—And Note that HERLE agreed that the Inquest was not well joined—And note that *Mallum,* the Clerk, said that, after the time is passed, one shall recover against the Ordinary the presentation and damages to double a year's value.—STONORE. In this case, if he can now evade this *Quare impedit,* the *Quare non admisit* does not lie, for the time is passed; so that in this case if he be a disturber, the disturbance would be unpunished.—SCHARSHULLE. By his writ, which is brought against others, as well as against the Bishop, he proves the litigiousness of the patronage, in which case the Ordinary must needs dis-

especiale aver este avere sur Ordiner en *Quare impedit*, et nomement qant il descleyme en lavowesoun;[1] car il poet avower la destourbance en moult des maners qe ne pount estre triez en *Quare impedit*—come si le presente fust dedeinz age, ou escomenge, ou autre nounablete &c.; mes pur ceo, apres ceo qil avera bref al Evesqe vers lui, [et il ne voet resceiver son presente, il portera *Quare non admisit*, en quel cas si Lordiner ne se puisse escuser, il recovera vers lui][2] damages et son presentement, *non habito respectu ad lapsum temporis.*—*Parn.* Quei si Lordiner mad destourbe, de quele destourbance accion mest[3] done a recoverir damages, et puis il resceive mon presente, issi qe le *Quare non admisit* ne gist pas? Serra jeo sanz recoverir de la primere destourbance? *quasi diceret non.* Et par autre voie navera jeo accion fors par *Quare impedit.* Et enquest est joynt; et, coment qe ceo fust par errour, il covient qe vous la preignez, qar vous ne poez redresser vostre errour demene.—SCH. Si ele soit malement joynt, jammes ne serra pris pur nous.—*Et nota* qe HERLE assentist qe lenquest ne fust pas bien joynt.—*Et nota* qe *Mallum*, clerc, dit qe, apres temps passe homme, recovera vers Ordiner la presentement et damages a double.—STON. En cest cas, si il poet ore estourtre a ceo *Quare impedit*, le *Quare* [*non admisit* ne gist pas, qar le temps est passe; issi en cest cas si il soit destourbour, la destourbance][4] serreit despuny.—SCH. Par son bref, qest porte vers autres auxi bien come vers Levesqe, il prove la litigiousete del patronage, en quel cas il covient qe Lor- A.D. 1339.

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[1] T. and L., en lavowerie; 25184, &c., instead of en lavowesoun.

[2] The words between brackets are in T., but not in L. In 25184 the word des is substituted for them.

[3] L., nest.

[4] The words between brackets are part of the original text in T. and 25184, but were originally omitted from L., where they have been inserted by interlineation in a later hand.

A.D. 1339. turb.—*Parning.* If he and others disturb me, one writ is given to me against all in common; and if he have procured others to present, for his advantage, so that he may have the presentation by lapse of time, it has been adjudged to be a disturbance by him, for which an action is given, and by no other way can he be punished.—SCHARSHULLE. I know well that a *Quare impedit* lies against the Ordinary where he claims interest in the advowson as a lay patron, but if he disclaims you have gained your purpose &c.; and the Statute which fixes the damages is to be understood otherwise than as applying to the Ordinary who claims nothing &c.; and even though he claim [by lapse of time] it is not he against whom damages shall be recovered; for it is expressed in the Statute[1] that, if the plaintiff recover within the time, he shall have certain damages, and, if after the time has elapsed, whereby he loses his presentation, damages to the value of the church for two years; so that it is supposed by the Statute that, through disturbance on the part of the defendant, the plaintiff by lapse of time will lose his presentation; but if the Ordinary be party to the *Quare impedit*, he shall not have advantage of the lapse of time, nor shall a presentation accrue to him by devolution of time; for it is of his own wrong.—*Parning.* At common law the *Quare impedit* lay, and it is not taken away by Statute; and every one would lose his presentation if this were held to be law.—ALDEBURGH. In a *Quare non admisit* damages shall not be recovered except from the time at which that action is given, and that is after the judgment; so that if the disturbance was before, he can never be punished for that.—And note that they of the Inquest were always ready to pass here, and they stayed all the term.—SCHARSHULLE. Several writs lie against the Ordinary which do not lie

[1] 13 Edw. I. (Westm. 2), c. 5.

diner destourbe. — *Parn.* Si lui et autres me destour- A.D. 1339.
bent, un bref mest done vers touz[1] en comune ; et sil eit procure autres de presenter en son avantage, daver le presentement par temps passe, cest ajuge sa destourbance, de quei accion est done, et par autre voie ne poet estre puny.—SCH. Jeo say bien qe *Quare impedit* gist vers Ordiner la ou il cleyme en lavoesoun[2] cum lay patroun, mes sil descleime vous estes a vostre purpos &c. ; et par lestatut qe taille damages diversement est entendu qe Ordiner qe rienz ne cleime &c. ; et mesqe il cleime il nest pas celui vers qi damages serront recoveris ; qar lestatut voet qe si le pleintif recovere deinz le temps &c., certeins damages, et si apres par quei il perde son presentement, damages a la value del eglise de ij. aunz, issi qe par estatut est suppose[3] qe par destourbance del defendant le pleintif par temps passe perdra son presentement ; mes si Lordiner soit partie al *Quare impedit*, il navera pas avantage de temps passe, ne[4] par devolucion de temps presentement ne lui acrestra pas ; qar cest de son tort. — *Parn.* A la comune ley le *Quare impedit* gist, et par statut nest il pas ouste ; et chescun homme perdreit son presentement si cele ley fust tenu. — ALD. En *Quare non admisit* homme ne recovera pas damages fors de temps qe cele accion est done,[5] et ceo est puis le jugement ; issi qe si destourbance feust devant, jammes pur cele ne poet estre puny. — *Et nota* qe ceux del enquest sont touz jours prest a passer icy, et ont demure tut le terme. —SCH. Plusours brefs gisent vers Ordiner qe ne gisent

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[1] L., tenant ; 25184, tenauntz.

[2] L. and 25184, avowerie.

[3] T., lestatut est supposer instead of par estatut est suppose.

[4] L., et.

[5] The words est done are not in 25184.

A.D. 1339 against any other person, such as *Quare incumbravit,* and *Quare non admisit,* in which writ the Ordinary ought to and may excuse himself, and avow the disturbance by reason of the disability of the patron,—as, if he be excommunicated, the Ordinary is not bound to receive his presentee—and also by reason of the disability of the presentee; and in that case the matter shall be sent to the Metropolitan for him to certify the Court, for we can not have cognisance of the fact: and if the Inquest were to be taken now he would be convicted of the disturbance when by law he was entitled to make it.—And HERLE and all the most learned of the COUNCIL agreed that the Inquest was joined contrary to law and reason; and as to what was said, that the Bishop might procure others to raise a dispute whereby the collation might be devolved upon him, it would be well to ordain a law whereby the Ordinary might be convicted of deceit. — And afterwards, because those of the Inquest came previously by *Venire facias* and now were only "at small issues," and had remained in the town for six weeks, SCHARSHULLE said that the COURT had them in suspicion; wherefore it would not take the inquest by them, even though an inquest were to be taken; and he commanded them to go to the inn, and said that the COURT would consider whether the inquest should be taken in this case.

Note. (3.) § Note that proclamation shall not be had, upon a writ of Wardship, against the vouchee.

Debt. (4.) § Debt, against two persons by different *Præcipes* in one writ, on an obligation made by both; and they came and could not deny it; wherefore the plaintiff recovered.

vers nul autre, come *Quare incumbravit* et *Quare non admisit,* en quel bref Lordiner[1] deit et se poet escuser, et avower destourbance par cause de nounablete de patron,—come sil fust escomenge, il nest pas tenu de receiver son presente—et auxi noun ablete del presente;[2] et la serra la chose mande al Metropolitan de certifier la Court, car nous ne poms aver conisance: et si lenquest soit pris ore, il serreit atteint del destourbance, ou par ley il le poet faire.[3]—Et HERLE et touz les pluis sages del CONSEIL sont assentuz qe lenquest est joynt contre ley et resoun; et a ceo qomme parle qe Levesqe purra procurer autres de mettre debat par quei la colacion[4] fuyt devolut a luy, il serreit bien de ordener ley par quel Ordiner purreyt estre atteint de deceite. — Et puis pur ceo qe ceux del enquest vindrent autrefoitz par *Venire facias,* et ore ne furent fors a petites issues, et avoient demure en[5] ville a[6] vj. symaignes, SCH. dit qe COURT les ad en suspecion; par quei ils ne voleint pas prendre lenquest par eux, coment qenquest fust a prendre, et les comanda daler a lostiel, et COURT se avisera[7] si lenquest serra pris en cest cas. A.D. 1339.

(3.)[8] § Nota qe homme navera pas proclamacion vers le vouche en bref de garde. Nota. [Fitz. *Proclamacion,* 9.]

(4.)[9] § Dette vers deux par divers *Præcipes* en un bref, par une obligacion fait par lun, et lautre,[10] qe vindrent et ne poaint dedire; par quei le pleintif recoveri. Dette.

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[1] The words bref lordiner are not in 25184.

[2] L., presentement.

[3] L., il ne poet fere; T., *ille potest facere,* instead of il le poet faire.

[4] L., collusion.

[5] In L. un is inserted after en.

[6] L., fors a; T., de.

[7] 25184, salvera.

[8] From T., L., and 25184.

[9] From T., L., and 25184, as far as the point at which the larger type ends.

[10] The words qi heir il est are inserted after the word lautre in L. and T.

A.D. 1339. Debt. § An action of Debt was brought against divers persons, and in respect of divers covenants, by one writ, by divers *Præcipes*, &c.

Deceit. (5.) § Writ of Deceit. When the Grand Distress was returnable no writ was returned, and one of the viewers came and said that he was distrained, and he prayed his deliverance; and the tenant said that he was not the same person that was testified to be a viewer by the Sheriff, and so he himself said; but the plaintiff said that he was the same person, and prayed that he might be examined. And because the COURT could not know whether he was the same person or not, if he did not come upon process, an *Alias* writ issued.

Deceit. § A writ of Deceit was brought &c.; and the summoners, and the viewers, and the manucaptors were at the Grand Distress; but there was no writ returned. One came.—*Stouford.* But this is not the person who is one of the viewers, though he bears the same name. — And because no writ was returned, and he said it was not the same person, a day was given &c.

Formedon. (6.) § Robert Bernard brought a writ of Formedon in the Descender against J.—*Gayneford.* As to one acre of land, we have nothing except jointly with one B. who is not named; judgment of the writ. And as to another [acre] of the rest, one R. is tenant; judgment of the writ. — *Stouford.* He has given us two exceptions; each of them extends to the whole writ, so that we do not know to what we have to reply; wherefore for default of an answer we pray seisin of the land. — *Gayneford.* We must necessarily have the two exceptions, for if we were to be driven to hold to the non-tenure he would bring a new writ against us in respect of the rest, and then we should be ousted of our plea of joint-tenancy,

§ Un[1] bref de Dette fut porte vers divers persones, et de diverses covenauntz, par un bref, par diverse *Prœcipe* &c. A.D. 1339. Dette.

(5.)[2] § Bref de Deceite. [A la graunt destresse retournable nul bref fust retourne, et un des veours][3] vynt et dit qil fut destreint, et pria sa deliverance; et le tenant dist qil ne fust pas mesme[4] la persone qe fust temoigne veour par le Vicounte, et auxi dit il mesme; mes le pleintif dit qil fust mesme celui, et[5] pria qil fust examine. Et purceqe COURT ne poait saver le quel il fut mesme la persone ou noun sil nust venuz par proces, *sicut alias* issit. Deceite.

§ Bref[6] de desceite fut porte &c.; et les somonours et les veours et les pernours furent a la graunt destresse; mes il nyavoit nul bref retourne. Un vynt.—*Stouf.* Mes cest ny est pas mesme la persone qest un des veours, mes il porte mesme le noun.—Et pur ceo qe nul bref ne fut retourne, et il dit qe ceo ne fut pas mesme la persone, jour fut done, &c. De Desceite.

(6.)[7] § Robert Bernard porta bref de fourme de doun en le descendre vers J.—*Geyn.* Qaunt a un acre de terre nous navoms rien si noun joint od un B. nient nome; jugement de bref. Et qaunt a un altre del remenant un R. est tenaunt; jugement de bref.—*Stouf.* Il ad done ij. excepcions; chesqune de ceux estent a tut, issint qe nous ne savoms a quei respoundre; par quei pur defaute de respouns nous prioms seisine de terre.—*Geign.* Il covent a force qe nous eioms les deux, qar si nous serroms chace a prendre al noun tenue il portereit un novel bref devers nous del remenant, et dounqes nous serroms ouste Fourme de Doun.

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[1] This report of the case appears as of Easter Term in 16560 alone.

[2] From T., L., and 25184 as far as the point at which the larger type ends.

[3] In L. the words ou A. are substituted for the words between brackets, which stand in L. as part of the preceding case.

[4] In L. ceoluy is inserted after mesme.

[5] T., qe.

[6] This report of the case is from 16560 alone.

[7] From 16560 alone, as far as the point at which the larger type ends.

A.D. 1339. and so we should have to lose our warranty, which would be a great injustice.—SCHARSHULLE. It would be contrary to law to take issue on two exceptions where each of them affects the whole writ; and I say that the plea of joint-tenancy goes to the whole, as well as the plea of non-tenure. — SCHARDELOWE denied this.— *Stouford.* Moreover he ought not to elect which plea he will have, for when he alleges the joint-tenancy [of a portion] he supposes that he is tenant of the rest; wherefore he shall not be received to allege non-tenure after having alleged joint-tenancy. — And afterwards *Stouford,* of his own accord, said, Tenant of the whole of that in respect of which he alleged non-tenure.—And the plea of joint-tenancy was waived.

Formedon. § Formedon, where *Gayneford,* as to parcel, alleged joint-tenancy, and as to the rest, alleged non-tenure of parcel. — *Stouford.* When he first alleges joint-tenancy as to parcel, by that and by the nature of his exception he accepts the writ as good with respect to the rest, and by law he shall be put to answer as to the rest; and when he afterwards alleges non-tenure he supposes that he ought not to answer as to the rest; wherefore he shall not be received to allege non-tenure.—And afterwards *Stouford* waived the mode of exception, and prayed that he might hold to the joint-tenancy, and might plead as to the rest, or that he might hold to the non-tenure which goes to the abatement of the whole writ. — SCHARSHULLE. When joint-tenancy of parcel is alleged, the tenant shall answer as to the rest; but whenever the joint-tenancy of that parcel is found, the whole writ shall abate.—*Gayneford.* I can not hold to the one, on account of the injustice which would ensue; for if I were to hold to the non-tenure, and the party were to acknowledge it, and his writ were to abate, and he were to bring against me another writ for the rest, I should not be received to allege joint-tenancy if I am silent now, and thus I shall lose my warranty. — And afterwards he held to the non-tenure, and the demandant maintained his writ. — *Quære* whether, if this writ abate, he can upon another writ allege joint-tenancy.

Venire Facias. (7.) § Note, that one who had sued execution of lands upon a Statute Merchant devested himself of his estate in

de la jointenaunce, issint dussoms perdre nostre garrauntie, qe serreit un graunt meschef.—SCH. Il serreit countre ley de prendre issue sour ij. la ou chesqune de ceux refiert a tut; et jeo dye qe la joyntenaunce est auxi bien a tut come la noun tenue.—SCHRD. *negavit.*—*Stouf.* Auxi il ne deit mye elire quel il voet aver, qar qaunt il allegge le joyntenaunce il suppose qe il fut tenaunt del remenant; par quei de allegger noun tenu apres joyntenaunce il ne serra mye resceu.—Et pus *Stouf.* dit de gree, Pleynement tenaunt de ceo qe il allegga la nountenu.—Et la joyntenaunce fut wayve. A.D. 1339.

§ Forme[1] de doun, ou *Gayn.* qant a parcel alegga joyntenance, et qant al remenant il allegga nountenue de parcelle.—*Stouf.* Qant il allegge primes de parcelle joyntenance, par[2] cela et[3] par la nature de sa exepcion il accepte [le bref bon du remenant],[4] et par ley serra mys a respondre du remenant; et puis qant il allegge nountenue, il suppose qil ne deit respondre du remenant; par quei il ne serra pas resceu dallegger nountenue.—Et puis *Stouf.* weyva[5] la manere du chalange, et pria qil tenyst al joyntenance, et qil pledast de remenant, ou qil se tenist a la nountenue qest al abatement de tut le bref.—SCH. Qant joyntenance de parcele est allegge, le tenant respoundra del remenant; mes quel houre qe de cel parcel la joyntenance soit trove, tut le bref sabatera.—*Gayn.* Jeo ne puisse prendre al un pur[6] le meschief qensuera; qar si jeo preigne a la nountenue, et la partie la conust, et son bref abatist, et del remenant il portera un autre bref vers moi, jeo ne serra pas resceu dalegger joyntenance si jeo tese ore, et issi perdroi ma garrantie.—Et puis il se tient a la nountenue, et le demandant meintient son bref.—*Quære* si a[7] un autre bref si cestui bref abate, sil aleggera joyntenance. Forma Donationis.

(7.)[8] § Nota qun qavoit suy execucion de terres[9] hors destatut marchant se demist de son estat a un Venire Facias.

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[1] This report of the case is from T., L., and 25184.

[2] par is not in 25184.

[3] et is not in L. nor in 25814.

[4] The words between brackets are in T., but not in L. nor in 25184.

[5] L., vavia.

[6] pur is not in L., and le is in 25184 alone.

[7] L. and 25184, en.

[8] From T., L., and 25184.

[9] The words de terres are not in 25184.

A.D. 1339. favour of another, and the recognisor, making his suggestion in the Chancery that he who sued had released to the other, had a writ to the Justices according to his case, out of which issued a *Venire facias* against the two. And as to one, the Sheriff returned that he was on mainprise, and as to the other, that he had nothing in his bailiwick. And by the *testatum est* it was testified that he had something in another county; and a writ issued to the Sheriff of that county. And afterwards the Sheriff returned small issues on him who at first was mainprised. Wherefore *Trewith,* for the King, offered to aver that the Sheriff could have answered for more issues, and he prayed a writ to the Justices assigned to take Assises to enquire; and he had it. And it was said that this inquest shall be taken for the advantage of the King although the party be non-suited or the plea discontinued.

Note touching a Recognisance.

(8.) § An infant under age who had made a recognizance on Statute Merchant was taken; and by his friends he sued out of the Chancery a writ to the Justices, stating his case, and in the words "if this can be "established to your satisfaction, then according to "the law and custom, &c." And a writ issued to the Sheriff to cause the infant to come before the Justices, for he was in prison. And the infant came and was adjudged to be under age; wherefore he was sent in custody to the Fleet, and not mainprised. And a writ issued to warn him who had sued, if he could say anything &c.; and the Sheriff returned that he was dead. — *Stouford.* We pray, since you have adjudged him to be under age, that he may go quit; for you can know that it is impossible that he (the plaintiff) or any other can maintain the recognisance to be good; and if he were to come and say that the infant is not the same person, still he (the infant) would go quit. — SCHARSHULLE. The Statute can not be annulled in

autre, et le reconisour fesant sa suggestion en la Chauncellerie coment celui qe suyst avoit relesse a lui, et avoit bref as Justiz sur son cas, hors de quel issit un *Venire facias* vers les ij. Et qaunt al un le Vicounte retourna qil fust par meynprise et qe lautre navoit rienz en sa baillie. Et *per testatum est* tesmoigne fust[1] qil avoit en autre counte; et bref issit a cel Vicounte &c. Et puis le Vicounte retourna petitez issues sur celui qe primes fust par meynprise. Par quei *Trew.*, pur le Roi, tendi daverer qe le Vicounte poait aver respondu de plusours issues, et pria bref as Justices assignes as assises denqere; *et habuit.* Et fust dit qe cest enquest serra pris, coment qe la partie soit nounsuy ou le plee discontinue,[2] pur lavantage le Roi. A.D. 1339.

(8.)[3] § Un enfant deinz age qavoit fait une reconisance sur estatut marchant fust pris, et suist bref hors de la Chauncellerie, par ses amys, compernant son cas as Justiz, *quod si vobis constare poterit tunc secundum legem et consuetudinem* &c. Et bref issit au Vicounte[4] de faire venir lenfant devant Justiz, qar il fust enprisone. Et lenfant vient et fust ajuge deinz age; par quei il fut comande en garde de Flete sanz estre a meynprise. Et bref issit de garnir celui qavoit suy sil savoit rien dire &c.;[5] le Vicounte retourna qil fust mort. — *Stouf.* Nous prioms, del hour qe vous lavez ajuge deinz age, qil poet aler quites; qar vous poez saver qil, est impossible qil meyntiegne, ou acune autre, la reconisance bon; et sil venist et dit qe lenfant nest pas mesme la persone, uncore il irreit[6] quites. — SCH. Homme ne poet pas anientir lestatut en absence de partie.

Nota de Reconisaunce.

[Fitz. *Audita Querela*, 26.]

[1] The words tesmoigne fust are not in L. nor in 25184.

[2] discontinue is not in 25184.

[3] From T., L., and 25184 as far as the point at which the larger type ends.

[4] The words au Vicounte are not in T.

[5] In T. and L. the words *Venire facias* issit are inserted after "&c."

[6] L. and 25184, serra.

A.D. 1339. the absence of the party. — And afterwards a new warning issued, and the infant was mainprised.

Statute Merchant.

§ An infant within age was bound in a Statute Merchant. He to whom the obligation was made died, and his executors sued upon the Statute &c. The infant was taken into the custody of the Sheriff. And the infant came and sued a writ to the Justices of the Common Pleas in which it was mentioned that he was within age at the time of the execution of the statute merchant, and still was. And the words of the writ were: "If it can be "established to your satisfaction that he is within age"; in which case the Justices were to proceed, and do "according to "the law and custom of our realm." And there was another writ to the Sheriff out of the Chancery to cause the infant to come before the Justices. The infant came, and was viewed by the Court, and was, upon inspection, adjudged to be within age; wherefore he was delivered to the Warden and not to the Sheriff. —*Stouford* prayed that the infant might find mainprise; and the COURT would not permit it. And afterwards a *Scire facias* was granted against the executors and against those who administered, to answer as to his having become bound &c.

Writ of Mesne.

(9.) § Writ of Mesne, where the defendant alleged that he who was supposed to be the chief lord was dead, and so (said he) the writ is false as it expresses that we are mesne between them.—*Gayneford.* You have a day *Prece Partium;* besides the death of the chief lord paramount is nothing to you. And some of the JUSTICES pointed out that it made some difference whether he died before the *Prece Partium* was taken or after.—SCHARSHULLE. It is not reasonable that his action for non-acquittal should fail, as against you, through the death of another person; and it would be another thing if perchance forejudger were to be made, where by law the plaintiff would not by judgment be made attendant to a dead person, so that in such case one would have colour to abate the writ, but not here; wherefore answer. — *Stouford.* He who brings the writ has only an estate for life; judgment of the writ. — HILLARY. Shall

Et puis novel garnisement issit, et lenfant fust par meynprise. A.D. 1339.

§ Un[1] enfaunt deinz age fut oblige en statut marchaunt. Celuy a qi lobligacion fut fait morust, et ses executours suerent hors del estatut, &c. Lenfaunt fut pris en garde de Vicounte. Et vient lenfaunt et suy bref a les Justices de la Comune Place qe fist mencion qe il fut deinz age a temps de la confeccion del statut, et unquore feut. Et le bref voleit, &c. *quod si vobis constare poterit* qe il est deinz age qil irrount avaunt et fesoient *per legem et consuetudinem regni nostri.* Et il avoit autre bref hors de la Chauncellerie al Vicounte de fere venir lenfaunt devaunt les Justices. Lenfant vient et feut vewe de Court et fut ajuge deinz age par enspeccion; par quei il fut livere a Monde et ne mye a Vicounte.—*Stouf.* pria qe lenfaunt purreit trover meynprise; et la COURT ne le voleit soeffrer. Et pus un *Scire facias* fut graunte vers les executours et devers les ministres ou il fut oblige &c. Statut Marchaunt.

(9.)[2] § Bref de Meen,[3] ou le defendant aleggea qe celui qest suppose chief seignour fut mort, issi le bref faux qe voet[4] qe nous sumes meen entre eux. —*Gayn.* Vous avez jour par *Prece Partium*; ovesqe ceo [la mort le chef seignour paramount nest rien a vous. Et ascuns des JUSTICES assignerent diversite sil fut mort devaunt le *Prece Partium* pris ou apres].[5]—SCH. Il nest pas resoun qe saccion de noun[6] acquitance soit peri vers vous par autri mort; et autre serreit si par cas forjugger fust a faire, ou de ley le pleintif par agard ne serreit pas fait entendant[7] a mort persone, issi qen tiel cas homme avereit colour[8] dabatre le bref, mes icy nient; par quei responez.—*Stouf.*[9] Cestui qe porte le bref nad qe terme de vie; jugement du bref.—HILLARY. Navera femme tenant Bref de Mesne. [Fitz. *Mesne*, 12.]

[1] This report of the case is from 16560 alone.

[2] From T., L., 16560, and 25184.

[3] In T. only the word issit is inserted after Meen.

[4] 16560, suppose.

[5] The passage between brackets is in 16560 alone. In the other MSS. the words ceo nest rien a vous are substituted for it.

[6] T., moun instead of saccion de noun.

[7] 25184, attendaunt instead of pas fait entendant.

[8] 16560, matire.

[9] In 16560 the case is, from this point, somewhat differently reported, but, in the end, SCHARDELOWE "*dubitavit.*"

A.D. 1339. not a woman who is tenant in dower have such a writ? —*Stouford.* But a tenant for life shall have a writ of covenant.—And the opinion of the COURT was that the writ lay. — *Gayneford.* He shall not be received to allege &c., for the writ is affirmed by the *Prece Partium;* besides, he is seised of our homage. — *Stouford.* Then is it as we have said, namely that you have only an estate for life. — SCHARSHULLE. Although by covenant made between them, or by his own folly, he did homage, that does not prove that he has any other estate than for term of life; and there is no doubt that a tenant for term of life can employ such a writ; but then he ought to count according to his case, and that where the tenant for term of life is tenant to the chief lord.

Wardship. (10.) § Wardship of the lands and body, where, at the proclamation made, the defendant did not come. — BASSET adjudged that the plaintiff should recover the wardship and his damages, and told him that he might sue [a writ] to enquire of them, if he pleased.

Aiel. (11.) § A writ of Aiel was brought against Thomas de Lincoln and against one J. And the demandant made the descent from his grandfather to his father, and from his father to himself.—*Kelshulle.* You have here Thomas who tells you that he is sole tenant of the entirety; and J. disclaims the tenancy. And as to one acre of land of your demand we vouch J. to warranty; and as to the rest you cannot have an action, for your father, through whom you have made the descent, released to one J., whose estate we have, all the right which the demandant says he has in this land, by this deed which is here; judgment whether in opposition to the deed of your father, action &c.—*Hornby.* As to the voucher, let the voucher stand; and as to what you say to the effect that Thomas is tenant of the entirety, we will aver that you are tenant in common

en dower tiel bref? — *Stouf.* Mes tenant a terme de vie avera bref de covenant. — *Et opinio* CURIÆ *fuit* qe le bref gist.—*Gayn.* Il ne[1] serra resceu dalegger &c., qar[2] le bref est afferme par *Prece Partium;* ovesqe ceo il est seisi de nostre homage. — *Stouf.*[3] Donqes est il issi [qe nous avoms dit, saver][4] qe vous navez qe terme de vie. — SCH. Coment qe par covenant taille entre eux il fist homage, ou par sa folie, ceo ne prove pas qil ad autre estat qa terme de vie; et il nest pas doute qe tenant a terme de vie ne poet user tiel bref; mes donqes dust il counter solom son cas, et ceo ou le tenant a terme de vie est le tenant au chief seignour. A.D. 1339.

(10.)[5] § Garde des terres et de corps, ou, a la proclamacion fait, le defendant ne vient pas.—BASS. agarda qe le pleintif recoverist la garde et ses damages, et lui dist qil suyst denquere sil voleit. Garde. [Fitz. *Jugement,* 168.]

(11.)[6] § Bref de ael fut porte vers Thomas de Lincoln et devers un J. Et fist la descente de son ael taunqe a soun pere, et de son pere taunqe a luy.—*Kels.* Vous avez cy Thomas qe vous dit qe il est soul tenaunt del entier; et J. desclame en la tenaunce. Et qaunt a une acre de tere de vostre demaunde nous vouchoms a garraunt J.; et qaunt al remenant vous ne poiez accion aver, qar vostre pere, par mye qi vous avez fait la descente, relessa a un J., qui estat nous avoms, tut le dreit qe il dit qil ad en cele terre, par ceo fait qe cy est; jugement si countre le fait vostre pere accion, &c.—*Horn.* Qaunt al voucher, estoise le voucher; et qaunt a ceo qe vous ditez qe Thomas est tenaunt de lentier, nous voloms averer qe vous De Avo.

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[1] ne is not in L.

[2] qar is not in 25184.

[3] MSS., SCH.

[4] The words between brackets are not in 25184.

[5] From T., L., 16560, and 25184.

[6] From 16560 alone as far as the point at which the larger type ends.

A.D. 1339. as our writ supposes.—ALDEBURGH. You have accepted the voucher, wherefore you shall not be received to take an averment which would go to the abatement of the writ as a whole; and when a writ is brought against two, and one of them says he is tenant of the entirety, and the other disclaims, the demandant shall never have the averment.—*Hornby.* We shall not be barred by this deed, for our father was imprisoned at the time when it was executed (and he mentioned in whose custody, and where) and we do not understand that he can oust us from this action by any deed made while we were imprisoned. — *Kelshulle.* You shall not get to that, for, since the making of this deed, your father came into Court and acknowledged the deed to be good, and the deed was enrolled and inspected; and we do not understand you shall be received to say that at such a time your father was imprisoned. — And he had the record *sub pede sigilli.* Wherefore with respect to that parcel it was adjudged that the demandant should take nothing by his writ. And note that he shall not be afterwards received to say—Not the deed of his ancestor,—though he may be received to say—Not seised at the time of the execution. — But *Quære.* — And note that *Mallum* said he had seen half a score of times in this Court that, where a writ was brought against two and one said he was tenant of the entirety, this one was received to vouch the other, and the voucher was accepted, &c.

Note. § Note that in a Formedon a release by the ancestor, with warranty, was put forward. — *Hornby.* He was in your prison at the time of the execution. — *Gayneford.* You shall not be received to that; for in the King's Bench the same deed was enrolled at the prayer of your ancestor; and see here the record *sub pede sigilli;* judgment whether you shall be received to such a plea, in avoidance &c. — HILLARY adjudged that he should take nothing by his writ.

Writ of Right. (12.) § Writ of Right, where the count was entered on the roll, and was of the seisin of the ancestor of the

estes tenaunt en comune com nostre bref suppose.— A.D. 1339.
ALD. Vous avez accepte le voucher, par quei de prendre averement qe serreit en abatement de tut le bref vous ne serrez mye resceu; et qaunt bref est porte vers ij., et lun dist qe il est tenaunt del entier, et lautre descleyme, il navera jammes laverement.—*Horn.* Par ceo fait nous ne serroms barre, qar nostre pere al temps de la confeccion si fut enprisone (et dit en qi garde, et ou) et nentendoms mye qe par nul fait fait taunt com nous fumes enprisone nous puse de ceste accion oster. —*Kels.* A ceo navendrez mye, qar pus la confeccion de ceo fait vostre piere vient en Court et conust le fait estre bon, et le fet fut enroule et veu; et nentendoms mye qe il serra resceu adire qe a tiel temps il fut enprisone. Et avoit le recorde *sub pede sigilli.* Par quei, de cel parcel fut agarde qe il ne prist rien par son bref. Et *Nota* qe il ne serra mye resceu apres adire nient le fet soun auncestre, mes adire nient seisi al temps del confeccion il avendra.—*Sed Quære. Et Nota* qe *Mallum* dit qe il avoit veu x. foith en ceste place qe la ou bref fut porte vers ij. et lun dit qe il fut del entier tenaunt qe il serreit resceu de voucher lautre, et le voucher accepte, &c.

§ Nota[1] qen Forme doun relees launcestre fust mys avant ove garrantie.—*Horn.* Il fust en vostre prisone a temps de la confeccion.—*Gayn.* Vous ne serrez resceu; qar en Bank le Roi mesme le fet a la prier vostre auncestre fust enroulle; et veez cy le record *sub pede sigilli;* jugement si a tiel plee en voydance &c. serrez resceu.—HILL. agarda qil ne prist rien par son bref. Nota. [Fitz. *Estoppel,* 180.]

(12.)[2] § Bref de dreit, ou le count fust entre et enroulle de la seisine son auncestre en temps le Roy De Recto.

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[1] This report (which is probably of the same case as that last above printed) is from T., L., and 25184.

[2] From T., L., 16560, and 25184.

A.D. 1339. demandant in the time of King Henry the First, cousin of the present King; and the mise was joined; and afterwards the tenant made default; whereupon the demandant prayed judgment. And because the COURT perceived that the count was not permissible in law, viz., to count of the seisin of his ancestor before the time of limitation, they would not give judgment.

Attachment.

(13.) § Attachment on Prohibition, where the party pleaded to issue; and, pending this suit, the plaintiff made his suggestion how that the party, notwithstanding the prohibition, sued on until he was excommunicated and taken, and thereon had a writ of attachment out of the rolls; on which writ the plaintiff is now essoined; and to the original writ he appeared by attorney, and prayed that the Jury might be respited.—*Gayneford.* We pray that the parol may be put without day, for see here the Bishop's letter testifying that he is excommunicated. — HILLARY. The letter affirms his suit to be good as to the writ issued out of the rolls, and the other plea shall not be put without day, inasmuch as it is your own suit.—Wherefore the Jury was respited, and the essoin was adjudged.

(14.) § A writ was brought by different *Prœcipes* against two men and their wives. They appeared by attorney, and vouched one J. to warranty.—J. came into Court and asked what they had to bind him, &c. —*The Attorney* said that one of the wives was dead, &c. — *The Demandant.* Since you do not say anything with regard to the vouchee we pray seisin of the land; and whereas you say that she is dead we say that she is living; ready. — *The Vouchee* said that, since

Henry le primer, cosyn al Roy qe ore est; et la myse fust joynt; et puis le tenant fist defaute; sur quei le demandant pria jugement. Et pur ceo qe la [COURT vist qe la][1] count ne fust pas soeffrable de ley a counter de la seisine soun auncestre[2] devant la limitation, il ne voleit nul jugement rendre. A.D. 1339. [Fitz. *Office del Court*, 21.]

(13.)[3] § Attachement sur la prohibicion, ou la partie pleda a issue; et pendant cele suyte le pleintif fist sa suggestion coment la partie, *non obstante* la prohibicion, suyst avant tanqil fust escomenge et pris, et sur ceo avoit il bref hors de roulles dattacher, a quel bref le pleintif[4] est ore essone, et al bref original il apparust par attourne, et pria qe la Juree fut mys en respit. — *Gayn.* Nous prioms qe la parole soit mys sanz jour, qar veez cy lettre Levesqe qe tesmoigne[5] qil est escomenge. — HILL. La lettre afferme sa suyte bon[6] quant a bref issu hors des roulles, et lautre plee ne serra pas mys sanz jour par tant qe cest vostre suyte demene.—Par quei la Juree fust mys en respit, et lessone ajugge. Attachement. [Fitz. *Attachement sur Prohibicion*, 9.]

(14.)[7] § Bref fut porte par diverse *Præcipes* vers ij. hommes et lour femmes. Il furent par attourne et voucherent a garraunt un J.—J. vint en Court et demanda ceo qe il avoient de luy lier &c.—*Lattourne* dit qune des femmes fut mort &c. — *Le demandant.* Del houre qe vous ne ditez rien devers le vouche nous prioms seisine de terre; et, la ou vous ditez qel est mort, ele est en vie; prest. — *Le vouche* dit, del

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[1] The words between brackets are in 25184 alone.

[2] For the words from soeffrable to auncestre, which are in 16560, there are substituted in L. the words garranti par ley fust, in 25184 the words garranti par ley pur ceo fust, and in T. the words last mentioned followed by de une demande.

[3] From T., L., 16560, and 25184.

[4] 16560, il, instead of le pleintif.

[5] 16560, provant, instead of qe tesmoigne.

[6] bon is not in T.

[7] From 16560 alone as far as the point at which the larger type ends.

A.D. 1339. nothing had been shown to bind him, he prayed to be essoined. — *The Attorney* said to the *Demandant* — If you will proceed against one who is dead, we are ready to plead.—*Quære* whether the averment is receivable.

Voucher. § A writ was brought against two men and their wives by different *Præcipes;* and they vouched one who came by summons and asked what they had to bind him; and *The Attorney* of the tenants said that one of the wives was dead.—*Pole*, for the demandant, said that she was alive, and, since no specialty was shown to bind the vouchee, prayed judgment and seisin of the land.—*The Attorney.* If you will sue against a person who is dead, at your peril, we will give a sufficient answer.

Formedon. (15.) § Formedon, for rent.—*Pole.* You have here the tenant of the land whence you suppose &c., who pleads "out of the donor's fee" &c.; judgment whether to this writ, without a specialty, &c.—SCHARSHULLE. That is to his action; and he has a title in his writ; and it has been seen upon writ of Entry *sur disseisin* that the demandant has been received to count in respect of rent without a specialty; and it was decided that W. Twenge was to be received upon a similar writ of Formedon, without a specialty.—*Pole.* In that case he counted that the donor was seised and gave &c.; and we will aver that the donor was never so seised that he could make the gift.

Formedon in the Descender. § J. de C. brought a writ of Formedon in the Descender against B., and demanded a carucate of land and ten shillings of rent.—*Pole.* As to the land, he whom you suppose to have been the donor was never seised so that he could give; and as to the rent, it is issuing out of a mill which is out of his fee; judgment whether without a specialty, &c. — *Stouford.* We will aver that he gave. — *Pole.* If you will say that he was seised and died, that is one thing. — SCHARSHULLE. It is only expressed in his writ that such an one gave, &c.; and it has been seen in cases of the same nature that the party has not been driven to put forward a separate specialty; and so also upon a writ of Entry *sur disseisin.*

houre qe il ne luy moustre rien de lier il pria qil fut essone.—*Lattourne* dit al *demandaunt*—Si vous voillez suyr devers cely qest mort, nous sumes prest a pleder. —*Quære* si laverrement soit resseyvable. A.D. 1339.

§ Bref[1] fust porte vers deux et lour femmes par divers *Præcipes*, qe voucherent un qe vient par somons et demanda ceo qil avoient de lui lier; et *Lattourne* des tenantz dit qe lune des femmes fust mort.—*Pole*, pur le demandant, dit qele fust en vie, et del hour qil ne moustra pas especialte par quei lier[2] le vouche pria jugement et seisine de terre.—*Lattourne*. Si vous volez suyre vers[3] mort persone, a vostre peril, nous dirroms assetz. Voucher.

(15.)[4] § Forme doun de rente.—*Pole*. Vous avez cy le tenant de la terre dont vous supposez &c., et vous dit qe doun hors de son fee &c.; jugement si a ceo bref sanz especialté.—Sch. Cest a saccion, et il ad title en son bref; et homme ad veu qen bref dentre sur disseisine qe le demandant ad estee[5] resceu de rente sanz especialte; et W. Twenge fust resceu en forme de doun sanz especialte par agard en tiel bref.—*Pole*. La counta il qe le donour fust seisi et dona &c.; et nous voloms averer qe le donour ne fust unqes seisi qil poet doun faire. Forma Donationis. [Fitz. *Hors de son Fee*, 25.]

§ J.[6] de C. porta bref de Fourme de Doun en le Descendre vers B., et demanda un carue de tere et x. *s.* de rente.—*Pole*. Qaunt a la tere, cely qe vous supposez qe dona il ne fut unques seisi issi qe il put doun faire; et qaunt a la rente, il est issaunt dun molyn le quel est hors de soun fee; jugement si saunz especialte &c.—*Stouf*. Nous voloms averer qe il dona.—*Pole*. Si vous voillez dire qe il fut seisi et devia, cest un.—Sch. Soun bref ne veut autre mes qe un tiel dona &c.; et homme ad vew en mesme le cas qe il ne fut pas chace de mettre altre especialte, et auxi en un bref dentre sour disseisine. Fourme de Doun en le Descendre.

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[1] This report of the case is from T., L., and 25184.

[2] leir in T. and L.

[3] T., pur; L., de.

[4] From T., L., and 25184 as far as the point at which the larger type ends.

[5] L. and T., fust instead of ad estee.

[6] This report of the case is from 16560 alone.

A.D. 1339. Protection. (16.) § A writ was brought against four persons. The Grand *Cape* issued; at the return of the *Cape* two came, a third made default, and one put forward a Protection for the fourth, and prayed that the parol might demur. And *Gayneford* said, besides, that he who made default had nothing, and prayed that the parol might be put without day.—*Kelshulle.* We pray seisin of a fourth part, for the default of him who comes not.—HILLARY. When a writ is brought against several, and a Protection is allowed for one, the entire parol shall demur without day.—Wherefore, by judgment, the parol demurred as to all.

Protection. § A writ was brought against four persons. One of them made default after default, and they had a day until now when one of the others came and put forward a Protection.—*Kelshulle.* We pray seisin of the land so far as regards the fourth part, by reason of the default, &c.—HILLARY. He has put forward a Protection for one; and protection for one puts the parol without day for all; and, even though the others were willing to plead, we should not receive them.—And afterwards the parol was put without day for all.—And he for whom the Protection was put forward said that he who made default had nothing in the land, &c.

Note. (17.) § Note that in a plea of land the Sheriff returned to the summons that he "sent to the bailiff of "the liberty, who nothing &c."—A *Non omittas* issued; and the tenant came by summons and vouched in the same county.—*Pole.* We pray the *Non omittas* in the summons to warrant, for the lord has in this plea lost his franchise.—HILLARY. This is in a manner a counterplea; although there was at first a default in him, yet that does not oust him of his franchise now.—*Pole.* It would be unfitting and contrary to the Statute[1]

[1] Perhaps 9 Edw. III. St. 1. c. 4.

(16.)[1] § Bref porte vers iiij. Grant *Cape* issit; al *Cape*[2] retourne les deux vindrent, et le terce fist defaute, et un mist avant proteccion pur le quart et pria qe la parole demura.—Et *Gayn.* dist, Ovesqe ceo, qe celui qe fait defaute nad rien, et pria qe la parole fust mys sanz jour.—*Kels.* Nous prioms seisine de la quarte partie par la defaute celui qe ne vient pas.—HILLARY. Qant bref est porte vers plusours, et la proteccion soit allowe pur un, tute la parole demura sanz jour.—Par quei la parole demura qaunt a toutz[3] par agarde. A.D. 1339. Protecyon. [Fitz. *Proteccion*, 70.]

§ Bref[4] fut porte vers iiij. Un de eux fit defaute apres defaute, et il avoient jour taunqe ore un de les altres vint et mist avaunt la proteccion.—*Kels.* Nous prioms seisine de tere en dreit de la quarte partie, par la defaute, &c.—HILLAR. Il ad mys avaunt proteccion pur lun; et proteccion de un[5] met la parole saunz jour vers touz; et, mesqe les autres vodrount pleder, nous les resceiveroms mye.—Et pus la parole fut mys saunz jour pur toux.—Et celuy pur qi la proteccion fut mys avaunt dit qe celuy qe fit defaute navoit rien en la tere, &c. Protecion.

(17.)[6] § Nota qen plee de terre le Vicounte retourna a la somons *quod mandavit ballivo libertatis qui nihil*, &c.—*Non omittas* issit; le tenant vint par somons, et voucha en mesme le counte.—*Pole.* Nous prioms *Non omittas* en le[7] somons *ad warrantizandum*, qar le seignur ad perdu en ceo plee sa franchise.—[HILLARY. Ceo est un contreple en manere; coment qil avoit primes defaute en lui, uncore ceo ne lui ouste pas de][8] sa franchise a ore.—*Pole.* Il serroit inconvenient et contre lestatut qil ust sa franchise Nota. [Fitz. *Proses*, 32.]

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[1] From T., L., and 25184 as far as the point at which the larger type ends.

[2] The words al *Cape* are not in T.

[3] The words qaunt a toutz are not in 25184.

[4] This report of the case is from 16560 alone.

[5] MS. eux.

[6] From T., L., and 25184 as far as the point at which the larger type ends.

[7] L. and 25184, cel.

[8] The words between brackets are in T., but not in L. nor in 25184.

A.D. 1339. that he should have his franchise upon this original. — And to this the COURT assented. Wherefore it was expressed in the summons to warrant "that he should "not omit on account of that liberty." And this is by reason of the possibility that he who is now vouched may have land in the same liberty, where the Sheriff shall himself exercise his office.

After Non omittas the tenant vouched, and a Non omittas issued, as before.

§ In a *Præcipe*, upon the issue of the Summons it was sent to the bailiff of the Liberty, who No Answer &c.; wherefore a *Non omittas* &c. Afterwards the tenant came and vouched in the same County. — *Mallum* would have had a general Summons directed to the Sheriff just as if a *Non omittas* had never been granted upon the first process. — THE COURT. Perhaps, the vouchee has land within the same liberty, and in that case the Sheriff will send again to the same bailiffs who have already lost the privileges of the liberty on this same writ. — *Mallum.* There is nothing strange in that, for this is a new suit between the tenant and the vouchee; and it is possible that the vouchee has land in other liberties, in the same County wherefrom the return has been made, which will have lost their privilege if a *Non omittas* be now granted. And, notwithstanding this, THE COURT granted a *Non omittas.* And the mischief pointed out by *Mallum* might be considerable, for by virtue of a *Non omittas* the Sheriff has warrant to execute the writ throughout the whole of his bailiwick, wherefore he might return that the vouchee has nothing in the first liberty but has something in such another liberty, to the bailiff whereof he has sent, "which bailiff thus answers me."

Objection to an Essoin.

(18.) § A writ was brought against one; and he had constituted his attorneys, and had pleaded to issue to the country; and he made default at *Nisi prius;* wherefore the Petit *Cape* issued; and on the day he came in his own person and alleged imprisonment, as appears above by the first plea in Hilary term. He had a day over, and was essoined, and an objection was raised against the essoin because he had attorneys; and it was adjudged and adjourned. And afterwards the demandant proffered himself, and found by the record that the tenant had attorneys when he was essoined; and he prayed seisin of the land &c. — *Gayneford.* He can not say that now, for

en cest original.—*Et ad hoc consensit*[1] CURIA. [Par quei le somons *ad warrantizandum* fist mencion *quod non omittat propter illam libertatem.*][2] Et cest pur la possibilite qil poet aver terre en mesme la franchise qest ore vouche ou le Vicounte fra loffice mesme. A.D. 1339.

§ En[3] un *Præcipe* a la somons maunde fut al baillif qe *nihil* &c.; par quei le *Non omittas* &c. Pus le tenaunt vient et voucha en mesme le Counte.—*Mallum* voleit aver ewe un general somons al Vicounte com si en le primer processe unques le *Non omittas* eust este graunte. — CURIA. Par cas le vouche ad tere deinz mesme la fraunchise et issint maundra il ore a mesmes les baillifs qount perdu fraunchise en mesme cestuy bref. — *Mallum. Non mirum,* qar ceste un novel sute entre le tenaunt et le vouche; et put estre qe le vouche ad tere en autres fraunchises deinz mesme le Counte de retourn queux ount perdu lour fraunchise si le *Non omittas* soit ore graunte. Et *non obstante* LA COURT graunta *Non omittas.*—Et le meschef *Mallum* purra estre asseuz, qar par le *Non omittas* le Vicounte ad garraunt de fere execucion de bref en toute sa baillie, par quei il put retourner qe le vouche nad rien en la primere fraunchise mes en un tiel, a quel ballif il ad maunde, *qui mihi sic respondet.* Apres Non omittas le tenant voucha, et Non omittas, ut prius.

(18.)[4] § Bref fust porte vers un; et avoit fait ses attournez, et avoit plede a issu du pays; et al *Nisi prius* fist defaute; par quei le petit *Cape* issit; a quel jour[5] il vient en propre persone et allegga enprisonement *ut patet supra termino Hillarii primo placito;* avoit jour outre, et fust essone, et lessone chalange, purceqil avoit attournez; et fust ajugge et ajourne. Et puis le demandant se profri, et trova par record qil avoit attournez qant il fust essone, et pria seisine de terre &c. — *Gayn.* Ceo ne poet il ore dire, Essoyn chalenge.

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[1] L. and 25184, *concessit.*

[2] For the words between brackets are substituted in 25184 the words et *Pole* avoit sa priere.

[3] This report of the case is from 16560 alone.

[4] From T., L., and 25184 as far as the point at which the larger type ends.

[5] L., bref.

A.D. 1339. he ought to have said it when the tenant alleged imprisonment for himself alone; and the tenant ought to have been ousted of that allegation, because then he had attorneys.—This was not allowed.—And then the tenant alleged the removal of his attorneys long previously.—And because this could not be found, seisin of the land was awarded.

§ A writ was brought against J. He made default after appearance, wherefore the Petit *Cape* issued. At the return of the Petit *Cape* he came into Court, and said that he had been imprisoned. At such time at large [said the other side]. Inquest was joined thereupon &c. On the day he was essoined. Inasmuch as he had made his attorney, who had not been removed, the essoin was quashed, and seisin of the land was adjudged.

Account. (19.) § Account, brought for an heir in socage against the Abbess of Barking. And the count was pursuant to the writ, reciting the Statute,[1] and showed for what length of time she occupied the wardship and his lands by reason of his non-age &c.—*Pole.* Judgment of the count; for the Statute says that the next friend ought to have the wardship, and in his count he does not make the Abbess the infant's next friend; judgment.—SCHARDELOWE. The law understands him to be the next friend who occupies the wardship; and, though the greatest stranger in the world had occupied the wardship, I should have my recovery against him; wherefore plead over.—*Stouford.* Also this writ is given by statute, in which is mentioned "relation" and not "next friend"; judgment of the writ.—And this was not allowed.—*Pole.* Whereas you suppose that the infant's ancestor held in socage, he did not hold in socage; judgment whether such a writ lies.—*Gayneford.* You do not claim seignory in chivalry,

[1] Of Marlb. (52 Hen. III.) c. 17.

qar ceo dust aver dit qaunt le tenant allegga enpri- A.D. 1339.
sonement pur lui mesme soulement, et il duist aver este ouste de cele alleggance, pur ceo qil avoit adonqes attournez.—*Non allocatur.*—Et puis il allegga remuement de sattournez long temps devant.—Et pur ceo qe ceo ne poat estre trove, seisine de terre fust agarde.

§ Bref[1] fut porte vers J. Il fit defaute apres apparaunce, par quei le Petit *Cape* issit. Al Petit *Cape* retourne il vynt en Court, et dit qe il fut enprisone. A tiel temps &c. alarge. Enqueste sour ceo joynt &c. A quel jour il fut essone. La ou il avoit fet soun attourne nient remue lessone quasse, et seisine de tere agarde.

(19.)[2] § Acompt pur heir en sokage vers Labbesse Acounte.
de Berking. Et le count fust pursuant del bref, reher- [Fitz.
ceant lestatut, et moustra de qaunt de temps ele oc- *Accompt*,
cupa la garde et ses terres par resoun de son noun age 77.]
&c.—*Pole.* Jugement du count, qar lestatut voet qe le proscheyn amy deit aver la garde, et il ne fait mye Labbesse[3] proscheyne amye a lui en count countant; jugement.—Sch. Ley entent celui estre proscheyn amy qe occupe la garde; [et, mesqe le plus estraunge del monde eust ocupe la garde, jeo averay mon recoverir devers lui;][4] par quei dites outre.—*Stouf.*[5] Auxi cesty bref est done par statut, et parle de parent et ne mye de prochein amy; jugement de bref.—*Et non allocatur.*—*Pole.* La ou vous supposez qe launcestre lenfaunt tient en sokage il ne tient mye en sokage; jugement si tiel bref gise.—*Gayn.* Vous ne clamez pas seignurie en chivalerie, nen autre manere, ne vous

[1] This report of the case is from 16560 alone.

[2] From T., L., 16560, and 25184.

[3] 16560, Prioresse.

[4] The words between brackets are in 16560 only.

[5] So in 16560. But Stouford's speech is omitted from the other MSS., in which Pole's speech is thus given:—*Pole.* Nous fesoms protestacion qe nous ne conussoms pas qe les terres furent en nostre garde; et vous dioms qe les terres ne sount pas tenuz en sokage; jugement si tiel bref igise.

A.D. 1339. nor in any other manner, nor do you show that you have reason to occupy the lands; judgment whether such an answer lies in your mouth.—*Pole.* The writ is given by Statute for lands holden in socage, and not in any other case; and if one occupy lands which are holden in chivalry of another, and not of himself, an action of Account does not lie, but an assise of Novel Disseisin or Mort d'Ancestor; and we pray that you record that he does not deny that the lands are not holden in socage. — SCHARDELOWE. What reason do you show that you ought to have the lands and the issues &c.? And the averment which you offer cannot be, unless you show some reason on your part for having the land. — And nevertheless the attorney did not dare to demur, but offered to aver that the land was holden in socage; ready &c.—And the other side said the contrary.

Formedon. (20.) § A writ of Formedon against a French Prior. —*Trewith.* The King is seised of all the lands of alien religious houses, and we do not think that during the King's possession you will proceed.— *Gayneford.* You are not apprised of this matter by record; wherefore we pray seisin, since he does not answer.—HILLARY. It lies in record whether the King be seised; and whether the Prior be an alien or not, of that we ought not to enquire. —And afterwards a writ was shown which recorded this matter; and it was expressed in the writ that the King had leased the custody of the Priory to the said Prior &c.—*Pole.* Now you are apprised that the King is seised of the freehold; wherefore we pray that you abate the writ. — *Gayneford.* The parol shall be put

moustrez pas qe vous avez resoun docupier les terres; jugement si tiel respons en vostre bouche igise.—*Pole.* Le bref est done par statut des terres tenuz en sokage, et en autre cas nyent; et si un autre occupe terres qe sont tenuz de autre[1] en chivalerie et noun pas de lui, accion dacompt ne gist pas, mes assise de novele disseisine ou mortdancestre; [et prioms qe vous recordez[2] qil ne dedit pas qe les terres ne sont pas tenuz en sokage].[3]—SCHD. Quelè resoun moustrez vous qe vous duissez aver les terres [et les issues &c.? Et laverement qe vous tendez ne put pas estre, si noun qe vous moustrez cause en vous daver la terre].[4] —*Et tamen attornatus*[5] *non audebat morari,* mes tendit daverer qil fut tenu[6] en sokage; prest &c.—*Et alii e contra.* A.D. 1339.

(20.)[7] § Bref de Forme de doun vers un Priour Franceis.—*Trew.* Le Roi est seisi de touz les terres de religiouses alienes, et nentendoms pas qe duraunt la possession le Roi vous voillez aler avant.—*Gayn.* Vous nestes pas apris de ceste chose par record; par quei nous prioms seisine, del hour qil ne respond.—HILL.[8] Il chiet en record si le Roi eit seisine; et si le Priour soit aliene ou noun ceo ne devoms pas enquere.—Et puis bref fust moustre qe recorda ceste chose; et le bref voleit qe le Roi avoit lesse la garde de la Priourie al dit Priour &c.—*Pole.* Ore estes vous apris qe le Roi est seisi de frank tenement; par quei nous prioms qe vous abatez le bref.—*Gayn.* La parole Forma Donationis. [Fitz. *Briefe,* 264.]

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[1] The words de autre are in 16560 alone.

[2] L., retournez.

[3] The words between brackets are omitted from 16560.

[4] The words between brackets are in 16560 alone. For them are substituted in the other MSS. the words *quasi diceret* nul; pur quei donques ne devez aconter?

[5] L., *ordinatus.*

[6] T., qe tenaunz.

[7] From T., L., 16560, and 25184, as far as the word "respond" preceding the word "HILL."

[8] From T., L., and 25184 hence to the point at which the larger type ends.

A.D. 1339. without day; and yet upon a writ of Annuity the Prior shall answer. — HILLARY. If you bring an action of Annuity, he shall not answer.

And because the King continues to be seised in law (though he has leased the land back to the person from whom he has taken it) until it be sued out of the King's hand, therefore the King is tenant.—

Wherefore it was adjudged that the demandant should take nothing by his writ.

Quare Impedit.

(21.) § The King brought a *Quare impedit*,[1] and took his title in that one James Talemache was seised of the manor of Bentley and of the advowson as appendant to the manor, and held the said manor &c. by knight-service of King Henry as in right of his crown, and presented his clerk &c. From James it descended to Hugh, and from him to Hugh as son, by reason of whose non-age King Edward, the grandfather &c., seized the manor &c., and leased the wardship to Matthew de la Mare who presented &c., after the death of whose presentee the church is now vacant. And afterwards the said Hugh, at his full age, leased the manor and the advowson, as appendant thereto, to Geoffrey de Sodenes for the term of his life without the King's license. And afterwards a fine was levied of the advowson &c. without the license of King Edward the grandfather, wherefore the presentation accrued to the King. From him the right of presentation descended to Edward as son and heir; and from him to Edward the present King; and thus it belongs to the King to present &c.—*Gayneford.* It belongs to us to present, and for the reason that one Osbert de Copdock, our ancestor, was seised of the manor of Copdock, to which the advowson is appendant, and presented in the time of King Henry. And he made the descent from Osbert to the defendant's grandfather, and

[1] Against John son of Hugh Talemache, and Robert Copdock, in respect of the church of Copdock, as appears by the record.

serra mys sanz jour; et uncore en bref dannuite le Priour respondra. — HILL. Si vous portez accion[1] del annuite il ne respondra pas. A.D. 1339.

Et[2] pur ceo qe le Roy est tut temps en ley seisi, mes qe il ad lesse arere a celuy de qi il prist, taunqe il soit suy hors de la mayn le Roy, issint est le Roy tenaunt.—

Par quei agarde fut qe il ne prist rien par soun bref.

(21.)[3] § Le Roi porta *Quare impedit*, et prist son title de ceo qun James Talemache[4] fust seisi du manoir de Benteley[5] et del avoeson come appendant al manoir, et le dit manoir &c. tient del Roi H. par service de chivaler come del dreit de sa corone, et presenta son clerc &c. De James[4] descendi &c. a H., de lui a Hugh[6] come a fitz, par qi noun age le Roi E. laiel &c., seisist le manoir &c. et lessa la garde a Mathieu de la Mare[7] qe presenta &c., apres qi mort leglise est ore voide. Et puis al pleine age H. mesme celui H. lessa le manoir et lavoweson come appendant a Geoffroi de Sodenes[8] a terme de sa vie sanz le conge le Roi. Et puis fine se leva del avoeson &c. sanz conge le Roi E. laiel, par quei le presentement acrust au Roi.[9] De lui[10] descendi le presentement a E. come a fiz et heir; de lui a E. Roi qor est; issi a lui appent a presenter &c.—*Gayn.* A nous appent a presenter, et par la resoun qun Osbert de Coppedok[11] nostre auncestre fust seisi del manoir de Coppedok,[12] a qi lavoesoun est appendant, et presenta en temps le Roi H. Et fist la descente de Osbert[13] tanqe Quare Impedit.

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[1] T., Sil porte assise; 25184, Si vous portez lassise.

[2] This conclusion of the report is from 16560 alone.

[3] From T., L., 16560, and 25184, corrected by the record, *Placita de Banco*, Trin. 13 Edw. 3, R° 121, d.

[4] L., W.; T., 16560, and 25184, B.

[5] MSS. of Year Books, A.

[6] MSS. of Year Books, Henri.

[7] MSS. of Year Books, a C.

[8] MSS of Year Books, a J.

[9] 16560, a lui, instead of au Roi.

[10] 16550, J.

[11] MSS. of Year Books, qun J.

[12] T., L., and 16560, de B.; 25184, de W.

[13] MSS. of Year Books, J.

A.D. 1339. fully acknowledged that James Talemache, from whom the King took his title, presented; but it was by usurpation made on one of his ancestors. And he admitted also that Matthew de la Mare presented, during the same usurpation, as guardian. And he said that afterwards his grandfather brought a writ of Right for the same advowson against Geoffrey de Sodenes who was supposed by the count to be tenant for term of life by lease from Hugh, and Geoffrey vouched Hugh who came and warranted and joined the mise on the better right. And afterwards the four knights elected the Grand Assise. And afterwards a fine was levied by which the grandfather's right was acknowledged by the said Hugh, and he rendered the advowson to the grandfather as his (the grandfather's) right. And he (*Gayneford*) made the descent of the manor, to which &c. to him (the defendant); and thus he is seised of the manor to which the advowson &c., without this that it is appendant to the manor of Bentley.—*Parning.* You do not answer the King; for whether the advowson be appendant or in gross, if it be holden of the King and be aliened without his license, it belongs to him to present. And as to what you say concerning the recovery upon a writ of Right, which recovery would make it appendant to your manor of Copdock, that is only a purchase of the King's tenant by a fine levied, which depends upon a covenant made between the parties; wherefore we pray a writ to the Bishop.—*Pole.* You have not counted that it belongs to the King to present, except in respect that the advowson is holden of the King, and that as appendant to the manor of Bentley; wherefore it is sufficient to traverse the appendancy. And if the advowson were in gross the King would have a different count. And if he will say that it is holden of the King as append-

a son aiel, et bien conisait qe James Talemache[1] de qi le Roi prist son title presenta; mes ceo fust par purprise fait sur un de ses auncestres. Et conusoit auxi qe M.[2] presenta, durant mesme la purprise, come gardein. Et dit qe puis son aiel porta bref de dreit de mesme lavoesoun vers G.[3] qe fust suppose par count tenant a terme de vie du lees H., le quel voucha H. qe vient et garrantist et joyna la myse sur la meillour dreit.[4] Et puis les iiij. chivalers eslurent la grant assise. Et puis fyne se leva par quel son dreit fust conu par le dit[5] H. et il rendi lavoeson a son aiel come son dreit. Et fist la descente du manoir a qi &c. tanqe a lui; issi est il seisi du manoir a qi lavoeson &c. sanz ceo qil est appendaunt al manoir de Benteley.[6] — *Parn.*[7] Vous ne responez pas au Roi; qar si lavoeson soit appendaunt ou gros, sil soit tenu du Roi et aliene sanz son conge, a lui appent a presenter. Et ceo qe vous parlez del recoverir sur bref de dreit, quel recoverir lui freit appendant a vostre[8] manoir de Coppedok,[9] ceo nest forqe un purchace del tenant le Roi par fyne leve qest dependant[10] sur covenant taille entre parties; par quei nous prioms bref al Evesqe. — *Pole.* Vous navez pas counte qe al Roi attient a presenter, mes pur ceo qe lavoesoun est tenu du Roi, et ceo come appendant al manoir de Benteley;[11] par quei a traverser lappendance suffit. Et sil fust gros le Roi avereit autre counte. Et sil voet dire qil est tenu du Roi come appendant,[12] prest

A.D. 1339.

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[1] L., W.; T., 16560, and 25184, B.

[2] T. and L., C.; 16560, B.; 25184, E.

[3] MSS. of Year Books, J.

[4] So in 25184; but T., meur dreit; L., meurdre dreit; and 16560, mourdr, instead of meillour dreit.

[5] L., com par le dreit, instead of conu par le dit.

[6] MSS. of Year Books, A.

[7] Hence to the point at which the larger type ends the report is from T., L., and 25184.

[8] T. and L., al, instead of a vostre.

[9] 25184, W.; T. and L., B.

[10] L., appendant.

[11] All three MSS., B.

[12] The words come appendant are not in 25184.

A.D. 1339. ant &c., ready &c. that it is not appendant. And if he will change his declaration, and say that it is holden of the King as in gross, ready &c. that it is not; wherefore let him elect one or the other, and we will answer. — *Parning.* You shall not be received to say that the advowson is not appendant to the manor of Bentley; for you can not claim any other estate in the advowson; for he whom we have made the King's tenant and from whom he takes his title held it as appendant; and the King was seised of the wardship and leased the manor to one who presented in right of the King, which could not be otherwise than as appendant. And afterwards Hugh, at his full age, did homage to the King for the manor and for the advowson as appendant, and afterwards leased the manor with the appurtenances, for term of life, to one against whom your ancestor brought the writ of Right for the advowson, supposing him to be tenant of the advowson, which can not be understood in any other manner than by virtue of the lease of the manor with the appurtenances; and he vouched as tenant, and was warranted, and joined the mise &c.; and all this proves that the King's tenant, whose estate you have, held it as appendant. And to confirm this still further we say that by record in the Chancery, that is to say by Inquest taken before the Escheator, it will be found that the manor of Bentley with the appurtenances was holden of the King; and for that reason the King seized the advowson as appendant; for if the advowson had been holden of another so that the King by his prerogative had seized it, mention ought to have been made of this in the Inquest of Office; but this was not done; wherefore it was seized as appendant, and in the manner found by the Office. At his full age Hugh did his homage and services; and in opposition

&c. qe nient appendant. Sil voet changer[1] sa demoustrance qe cest tenu du Roi come un gros, prest &c. qe noun; par quei elise lun ou lautre, et nous respondroms. — *Parn.* Vous ne serrez nient resceu a dire qe lavoesoun nest pas appendant al manoir de Benteley,[2] qar vous ne poez autre estat clamer en lavoesoun; qar celui qe nous avoms fait le tenant le Roi et de qi il prent son title le[3] tient come appendant; et le Roi fust seisi de la garde et lessa a un le manoir, qe presenta en le dreit le Roi, qe ne poiait autre estre[4] mes come appendant. Et puis H. a son plein age fist son homage au Roi[5] pur le manoir et lavoesoun come appendant, et puis lessa le manoir ove les appurtenances, a terme de vie, a un vers qi vostre auncestre porta bref de dreit[6] de lavoesoun [supposant le estre tenant de lavoweson,][7] qe ne poet estre entendu par autre manere mes par le lees del manoir ove les appurtenances; et il voucha come tenant, et fust garranti, et joyna la myse &c.; et tout ceo prove qe le tenant le Roi, qi estat vous avez, le tynt come appendant. Et pur afforcer cel uncore nous dioms qe par record en la Chauncellerie serra trove qe le manoir de Benteley[8] ove les appurtenances fust tenu du Roi, par enquest pris devant leschetour; et par cele resoun le Roi seisist lavoesoun come appendant; qar si lavoesoun ust este tenu dautre, issi qe le Roi par sa prerogative lust seisi, de ceo duist mencion aver este fait en lenquest pris doffice; mes issi nest il pas; par quei ceo fust seisi com appendant, et par la manere come trove fust par office. A son plein age H. fist son homage et ses serviz; contre quele chose il, sil

A.D. 1339.

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[1] L. and T., voleit chalanger.

[2] MSS. of Year Books, A.

[3] L. and 25184, lequel il.

[4] L., estat.

[5] The words au Roi are not in 25184.

[6] 25184, son bref, instead of bref de dreit.

[7] The words between brackets are not in T.

[8] T., A.; L. and 25184, B.

A.D. 1339. to this, he, if he were a party, would not be received to say that it is not appendant, nor consequently can one who claims estate only through him do so; judgment; and we pray a writ to the Bishop.—*Pole.* Your statement that the King was seised by reason of wardship, and that presentation was made in his right, (which presentation we do not admit) does not prove the appendancy; for the King by his prerogative would have the wardship, whether it was appendant or not, or of whomsoever it was holden; and the finding of the Inquest of Office, which you mention, does not deprive one of his answer with averment of the contrary; nor does the doing of homage, for one shall never mention for what he does homage; and Hugh himself, if he were a party, would have the averment which we offer. — SCHARDELOWE. The King is in possession of the presentation and of the advowson, not sued out of his hand for anything that we know; wherefore the COURT will consider whether you shall oust the King by such an averment without other suit.—*Pole.* This is not the reason for which he wishes to present; but it is because the advowson as appendant &c. is holden of him, and was aliened without the King's license; to which we have answered, and we offer to aver the contrary; and if he were another person, we should be at judgment because he refuses the averment.—SCHARDELOWE. Then you are at judgment whether the averment lies or not; wherefore the plea is finished. — And afterwards *Stouford*, for the King, offered to aver that the guardian in right of the King presented as appendant. And the defendant received the averment *gratis*, and said that the guardian presented by usurpation and not as appendant; ready &c. — And the other side said the contrary. — And note that the King shall have such day as he pleases.—And a *Nisi prius* was prayed, because the time was about to expire. It was not granted,

fust partie, ne serreit resceu a dire qe ceo nest pas appendant, ne *per consequens* celui qe cleime forsqe estat parmie lui; jugement; et prioms bref al Evesqe. — *Pole.* Ceo qe vous parlez qe le Roi fust seisi par resoun de garde, et qe presentement fust fait en son dreit, quel presentement nous ne conisoms pas, ceo ne prove pas lappendaunce; qar le Roi par sa prerogative avereit la garde, fust ceo appendant ou noun, ou de qiqunqe ceo fust tenu; et ceo qe vous parlez qe fust trove par enquest doffice ne tout[1] a nul homme respons daverer le contrari; ne la fesance del homage, qar jammes ne fra homme mencion pur quele chose il fait homage; et H. mesme, sil fust partie, avereit laverement qe nous tendoms.—SCH. Le Roi est en possession del presentement et del avoesoun nient suy hors de sa mayn pur rien qe nous savoms; par quei COURT savisera[2] si vous ousterez le Roi par un tiel averement sanz autre[3] suyte. — *Pole.* Ceo nest pas sa resoun par quei il voet presenter; mes est purceqe lavoesoun come appendant &c. est tenu de lui et aliene sanz le conge le Roi;[4] a quei nous avoms respoundu, et tendoms daverer le contrarie; et sil fust autre persone[5] nous serroms en jugement de ceo qil refuse laverement. — SCHD. Donqes vous estes en jugement si laverement igise ou noun; par quei le plee est fini. — Et puis *Stouf.*, pur le Roi, tendist daverer qe le gardein en le dreit le Roi presenta come appendant. Et le defendant *gratis* resceut laverement qil presenta par purprise et nient come appendant; prest &c.—*Et alii e contra.*—*Et nota* qe le Roi avera tiel jour come il voet. — Et *Nisi prius* fust prie purceqe le temps fuit a passer. *Non fuit concessum,* purceqe le Roi

A.D. 1339.

[Fitz. *Prerogative*, 17.]

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[1] L., tent.
[2] 25184, savera.
[3] autre is not in T.
[4] L. and 25184, son conge, instead of le conge le Roi.
[5] persone is not in T.

A.D. 1339. because the King did not wish it.—And afterwards in Michaelmas term it was found by Inquest that he presented as appendant; and the Inquest were also charged whether the church was then appendant to the manor of Bentley; and they said that it was; wherefore the King had a writ to the Bishop.

Parning repeated what he had said, and prayed judgment, since the other side had not denied that the advowson was holden of the King *in capite*. Wherefore the law does not put us to take an averment as to whether it be appendant to the manor of Copdock or to the other manor; and since you do not deny what we have said, we pray judgment, and a writ to the Bishop for the King.—*Pole*. The King has not counted in his count that the advowson was holden of him &c.; wherefore the law does not charge us in respect of this which is another matter not comprised in his count. But whereas he has made the advowson appendant to the manor of Bentley &c., I will aver that it is appendant to the manor of Copdock. And if it had been said that the advowson had been holden of the King *in capite*, we should have taken exception to the count.—SCHARDELOWE. Never shall the King's count be abated; but it is at his will to change his count and to count anew. And let us suppose that a man is seised of a manor to which an advowson is appendant, and one comes and usurps upon him, by which usurpation the advowson is made disappendant, then, if he bring his writ of Right and recover, it is still a question whether the advowson is made appendant by this recovery.—*Parning*. Whether it be appendant or in gross, &c., since you do not deny that the advowson is held of the King *in capite*, and was aliened without his license, it appears that the King shall have a writ to the Bishop.

Bill of Deceit.

(22.) § J. de Horneby brought a Bill of Deceit against one who was attached at his suit, and came in custody; and the bill was made in the words "to J. de STONORE "and his companions," without expressing "Justices &c." And it was further expressed in the bill that, whereas John [de Horneby] had brought his writ against the same person, the latter had caused John to be essoined without his knowledge, and that the essoin was adjudged and adjourned, in deceit of the Court, and to the delay of the suit. And the bill did not mention what writ he

ne voleit pas.—Et puis *Termino Michaelis* trove fust par enquest qil presenta come appendant; et auxi ils furent charge si leglise fust donqes appendant al manoir de Benteley;[1] et disoint qe oyl; par quei le Roi ad *Breve Episcopo.* A.D. 1339.

Parn.[2] rehercea, et demanda jugement del hour qe il navoit mye dedit qe lavowesoun ne fut tenuz de Roy en chief. Par quei de prendre averement le quel il soit appendaunt al manere de Coppedok[3] ou al altre manere la ley ne nous mette mye; et, del houre qe vous navez mye dedit ceo qe nous [avoms dit], demandoms jugement et prioms bref al Evesqe pur le Roy.—*Pole.* Le Roy nad mye counte en soun counte qe lavowesoun fut tenu de luy &c.; par quei a altre chose qe nest compris en soun counte ley ne nous charge mye. Mes la ou il ad fet lavowesoun appendaunt al manere de Benteley,[4] &c. jeo voille averer qil append al manere de Coppedok.[3] Et sil eust este dit qe lavowesoun ust este tenuz en chief de Roy nous ussoms chalenge le counte.—Sch. Jammes ne serra le counte le Roy abatu; mes il est a sa volunte de chaunger soun counte et counter de novel. Et mettoms qun homme est seisi de manere a qi un avowesoun est appendaunt, et un vint et purprent sour luy, par cele purprise lavowesoun est fait desapendaunt, et sil porte un bref de dreit et recovere, unquore est il un qestion si lavowesoun soit fet appendaunt par cel recoverir.—*Parn.* Le quel il soit appendaunt ou un gros &c., qaunt vous ne deditez mye qe lavowesoun nest tenu de Roy en chief, et fut aliene saunz conge de luy, il piert qe le Roy avera bref al Evesqe.

(22.)[5] § J. de Hornebi porta bille[6] de Deceite vers un qe fust attache a sa suyte, et vient en garde; et la bille fust fait a J. de Stonore et a ses compaignons, sanz dire Justices, &c. Et la bille voleit outre[7] qe la ou Johan avoit porte son bref vers mesme celui, la fist il Johan lui noun sachant estre essone, et lessone ajuge et ajourne, en deceite de la Court et delay de[8] sa suyte. Et ne fist pas mencion quel Bille de Deceite.

[1] MSS. of Year Books, B.

[2] This conclusion of the report is from 16560 alone.

[3] MS., B.

[4] MS., A.

[5] From T., L., 16560, and 25184.

[6] 25184, bref.

[7] outre is not in T.

[8] 16560, delaiaunt, instead of delay de.

A.D. 1339. had brought, nor when it was returnable, nor anything in certain; and exception was taken to the bill. And as far as the King was concerned, the plaintiff could not gainsay the exception; and he made his fine. And then J. prayed leave to seek a better bill, and that the body might remain in custody.—STONORE. When your bill is abated, he is without day as to you, and the King is satisfied.

(23.) § Writ of Right. The tenant joined the mise; and upon that mise the demandant imparled, and did not return; and for that reason final judgment was given against him and his heirs.

Cessavit. (24.) § A Prioress brought the *Cessavit* against J. He made default after default, wherefore it was adjudged that the Prioress should recover, but that execution should be stayed until enquiry had been made concerning collusion &c. Now on this day the Inquest comes. And they were charged by ALDEBURGH. And afterwards the Inquest came and said that the Prioress had right to recover. ALDEBURGH questioned the Inquest whether the Prioress was seised through the hand of the tenant. They said that she was. And they were questioned whether her predecessors were seised through the hands of those who were tenants in the time of King Henry, or in the time of King Edward the grandfather, and ever since. And so Note that enquiry shall be made concerning the whole time since the Statute *De Religiosis*.[1]

§ Note that in a *Quale Jus* which issued for the King upon a *Cessavit*, by which a Prioress recovered, the Inquest was charged whether the Prioress or her predecessors were seised in the time of King Henry, or in the time of Edward the grandfather of the present King, that is to say before the Statute,[1] and since then until the present time, of the services, and whether the land was holden of her, and whether there was not fraud or collusion &c. The Inquest found for the Prioress, wherefore she had execution.

[1] 7 Ed. I. *De Religiosis*. See also Westm. 2 (13 Ed. I.) c. 32.

bref il porta, ne qaunt [il fut retournable][1] ne rienz en certein; et la bille fust chalange. Et qaunt au Roi il ne poet dedire, et fist sa fyne. Et donqes J. pria conge de quere meillour bille, et qe le corps demurast. — STONORE. Qant vostre bille est abatu il est sanz jour qaunt a vous, et le Roi est servi. A.D. 1339.

(23.)[2] § Bref de dreit. Le tenant joyna la myse; sour quel mise[3] le demandant enparla, et ne revynt pas; par quei jugement final fust rendu contre lui et ses heirs. [Fitz. *Jugement*, 169.]

(24.)[4] § Une Prioresse porta le *Cessavit* vers J. Il fit defaute apres defaute, par quei fut agarde qe le Prioresse recoverist, mes qe execucion targeast taunqe enquis fut de la collusion &c. Ore a cestuy jour lenqueste vient. Et furent chargez par ALD. Et puis lenqueste vint et dit qe la Prioresse avoit dreit de recoverir.—ALD. opposa lenqueste si la Prioresse fut seisi par my la main le tenaunt. Ils disoient qe sil. Et furent opposez si ses predecessours furent seisiz par my les meins ceux qe furent tenauntz en temps le Roy H., ou en temps le Roi E. lael, et tut temps pus. *Et sic Nota* qe homme enquerra de tut temps pus statut *De religiosis.* Cessávit.

§ Nota[5] qen un *Quale Jus* qe issit pur le Roi sur un *Cessavit*, par quel une Prioresse recoveri, lenquest fust charge si la Prioresse ou ses predecessours furent seisiz [en temps le Roi H. ou][6] en temps E. lael le Roi, saver[7] devant lestatut, et puis en cea de serviz, et si la terre fust tenu de lui, et sil ny avoit pas fraude ne collusion &c. Lenqueste chanta pur la Prioresse, par quei ele avoit execucion. [Fitz. *Collusion*, 32.]

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[1] The words between brackets are in 16560 alone, from which, however, are omitted the words from "ne" to "certein" inclusive.

[2] From T., L., and 25184.

[3] The words sour quel mise are not in T.; in L., pur is substituted for sour.

[4] From 16560 alone as far as the point at which the larger type ends. See No. 26.

[5] This report of the case is from T., L., and 25184.

[6] The words between brackets are not in 25184.

[7] 25184, &c. si.

A.D. 1339. (25.) § A writ was brought against a tenant. He made default, &c. One J. came and prayed to be received to defend his right; and the receipt was counterpleaded. And they were adjourned &c.; and on the day given he caused himself to be essoined; and the essoin was quashed because it is not permissible for him to do this; and seisin of the land was adjudged.

Cessavit. (26.) § *Cessavit* for a Prioress. — *Kelshulle.* Never seised, ready &c. — *Pole.* Then you admit the tenancy. —Wherefore *Kelshulle* did not dare to await that issue on that ground, but said that he held of the King by certain services (and he showed by what), and not of the demandant; ready &c.—*Pole.* You hold of us; ready &c.—HILLARY. Certainly the issue shall be only whether you hold of her or not, and the rest shall not come on the roll.—And so it was done.

Cessavit. § J. de C. brought a *Cessavit* against B. and counted how that B. held of him a carucate of land in respect of which he had ceased for two years, &c.—*Pole.* He holds the same land of the King, and not of you.—*Gayneford.* He holds of us; ready &c.—*Pale.* We pray that it may be entered that we hold of the King. —SCHARDELOWE. Nothing shall be entered but whether he holds of you, or not.—And so it was.

Formedon. (27.) § Formedon in the descender for an infant under age.—*Power.* This is a writ of Right; judgment whether during his non-age he ought to be received in respect of this writ.—This objection was not allowed, for it is his possessory writ.—*Power.* His father, whose heir he is, by this deed enfeoffed us and A. of the mill which is now in

(25.)[1] § Bref fut porte vers un tenaunt. Il fit defaute, &c. Vint un J. et pria destre resceu a defendre soun dreit, et la receite countreplede. Et furent ajournez &c.; a quel jour il se fist essoner; et lessone quasse, *quia non potest;* et seisine de terre agarde. A.D. 1339. [Fitz. *Essone*, 19.]

(26.)[2] § *Cessavit* [pur un prioresse].[3]—*Kels.* [Unqes seisi, prest &c.—*Pole.* Donqes conises la tenaunce.—Pur quei, *Kels.* nosa pas *ea ratione* attendre cel issu, mes dit qil tient du Roi par certeinz serviz (et moustra par queux) et noun pas del demandant;][4] prest &c.—*Pole.* Vous tenetz de nous; prest &c.—HILLARY. Certes lissu serra soulement le quel vous tenez de lui ou noun, et le remenant ne vendra pas en rolle.[5]—*Et ita factum est.* Cessavit. [Fitz. *Issue*, 29.]

§ J.[6] de C. porta un *Cessavit* vers B. et counta coment il tient de luy un carue de tere qe il avoit cesse par ij. aunz.—*Pole.* Il tient mesme la tere de Roy, et noun pas de vous.—*Geyn.* Il tient de nous; prest, &c.—*Pole.* Nous prioms qe il soit entre qe nous tenoms del Roy.—SCHRD. Rien ne serra entre mes le quel il tient de vous ou noun.—*Et ita fuit.* Cessavit.

(27.)[7] § Forme de doun en descendere pur enfant deinz age.—*Power.* Cest un bref de dreit; jugement si durant son noun age a ceo bref[8] deive estre resceu.—*Non allocatur,* qar cest son bref de possession.—*Poer.*[9] Son pere, qi heir il est, par ceo fet feffa nous et un A. del molyn qest ore en demande a terme de Forma Donationis. [Fitz. *Age*, 96.]

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[1] From 16560, T., and L.; the words before "pria" from 16560 alone; T. and L., *Nota* qe un.

[2] From T., L., and 25184 as far as the point at which the larger type ends. See No. 24.

[3] The words between brackets are not in T.

[4] The words between brackets constitute in L. a part of the previous case (No. 25).

[5] 25184, ne serra pas entre, instead of ne vendra pas en rolle.

[6] This report of the case is from 16560 alone.

[7] From T., L., and 25184 as far as the point at which the larger type ends.

[8] bref is not in T., and the words a ceo are in 25184 alone.

[9] MSS., *Pole:* see the report from 16560, p. 339.

A.D. 1339. demand, for the term of our two lives, and bound himself and his heirs to warranty &c.; and you have assets by descent in fee simple; judgment &c.—*Pole.* He shows that the warranty extends to him and to another who is not a party, and he does not show that he has the estate of that other, and so if he were to deraign the warranty he would have nothing without that other; consequently he ought not to plead in bar.—SCHARDELOWE. By your writ you have made him sole tenant; wherefore it seems that he may well enough avail himself &c.—STONORE. He wished to abate your writ.—SCHARDELOWE. If one of two joint-tenants release to the other without warranty, one alone in that case can have the warranty; and so also if his companion were dead. It is otherwise if one receive from the other an estate by feoffment, in which case he would only have the warranty for a moiety. And by the mode of your pleading, if you were of full age, the deed would be acknowledged, and your demurrer would be whether he should bar you of one moiety or not; for it is quite clear that as to a moiety he can bar you by the deed; but you can not admit the deed; wherefore let the parol demur.

Formedon. § An infant within age brought a writ of Formedon in the Descender against one J., who said that he was within age, and for that reason ought not to be received during his non-age. But this was not allowed.

Formedon in the Descender. § J. de C. brought a writ of Formedon in the Descender against J.—*Power.* Your father, whose heir you are, by this deed which is here, enfeoffed us and one G., &c., and bound himself and his heirs &c.; judgment whether in opposition to that deed, &c., action &c. And besides this we tell you that you have assets by descent.—*Pole.* He has pleaded in bar by reason of the deed, &c. with warranty; and he himself supposes that the deed was made to another as well as to himself, and he does not

noz ij.[1] vies, et obliga lui et ses heirs a la garrantie &c.; et vous avez assetz par descente en fee simple; jugement, &c.—*Pole.* Il moustra qe la garrantie sestent a lui et a un autre qe nest poynt partie, et il ne moustra pas qil ad son estat, et sil[2] fust a derener garrantie il avera nient sanz lui; *per consequens* il ne deit pleder en barre.—SCH. Par vostre bref vous lavez fait soul tenant;[3] par quei il semble qil poet assetz bien user &c.—STONORE. Voleit[4] abatre vostre bref.—SCHR. Si un des joyntenantz relest a lautre sanz garrantie, lun soul en tiel cas poet aver[5] la garrantie, et auxi si son compaignon fust mort. *Secus est* si lun resceive de lautre estat par feffement, en quel cas il navereit garrantie fors de la moite. Et par la manere de vostre plee, si vous fussez de plein age, le fet serreit conu, et[6] vostre demoere serreit le quel il vous barrereit de lun[7] moite ou noun; qar il est tout cler qe de la moite il vous poet[8] barrer par le fet; mes vous ne poez conustre le fet; par quei demoerge la parole. A.D. 1339.

§ Enfaunt[9] deinz age porta bref de Fourme de Doun en le descendre vers un J. Il dit qe il fut deinz age par quei durant soun noun age il ne dust mye estre resceu. *Et non allocatur.* Fourme de Doun.

§ J. de C. porta bref de Fourme de Doun en le Descendre vers J.—*Poer.* Vostre piere, qi heir vous estez, par ceo fait qe cy est, enfeffa nous et un G. &c., et obligea luy et ses heirs &c.; jugement si countre le fet[10] &c., accion &c. Et od ceo vous dioms qe vous avez assez par descente.—*Pole.* Il ad plede en barre par le fet &c. od garranti; et il suppose mesme qe le fet se fit auxi bien a autre come a luy, &c. il ne moustre mye Fourme de Doun en le Descendre.

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[1] ij. is in L., but not in T., nor in 25184.

[2] T., issi.

[3] tenant is not in 25184.

[4] T., Volez.

[5] 25184, user.

[6] 25184, de.

[7] T., del, instead of de lun.

[8] T. vous poez instead of il vous poet.

[9] This report of the case is from 16560 alone, in which it is divided into two parts, separated by intervening cases.

[10] MS., counte.

A.D. 1339. show how he has estate through that other; judgment whether by reason of such a deed used in his hand he can oust us from this action.—HILLARY. He has answered as tenant of the entirety, and has accepted the writ, and you make no answer to what he has said, wherefore he prays judgment how he is to depart.—*Pole.* If he were to vouch, and to deraign a warranty, the vouchee would oust him on the ground that the warranty extended to two.—SCHARDELOWE. If two purchase to themselves and to their heirs and assigns, he who survives shall have the warranty of the whole, or if one releases to the other that other shall have the warranty of the whole; wherefore, since you do not deny that he is tenant of the entirety, it appears that he shall have the advantage of this deed, and you shall be barred of your entry with respect to the moiety. — *Pole.* I shall not be barred in respect of any parcel when his answer is no answer. — HILLARY. If one disseise another he shall never alone have the warranty of the whole, &c.

Prayer to be received.

(28.) § A writ was brought against Robert, and Isabel his wife. They made default after default.—*Pole.* You have here one W. who tells you that he leased the land to Robert and Margery his wife, who is named by the name of Isabel, (and she is the same person &c.) for term of their two lives &c., and by reason of their default we pray to be received to defend our right. —*Kelshulle.* The writ is brought against Robert and Isabel his wife, and your prayer ought to be in accordance with the Original, and that it is not &c. And if she with her husband were to bring a writ founded upon the Statute,[1] &c., the writ ought to be in accordance with the first Original on which this writ might be founded, or otherwise the writ would be worthless. No more can this receipt be allowed unless it be in accordance with the Original. — HILLARY. If he were not received a great injustice would follow, for the demandant might misname the wife, and that by agreement between the demandant and the husband and the wife, so that he would be ousted from his receipt. — SCHARDELOWE. If we receive the wife by a name other than that by which she is

[1] 13 Edw. I. (Westm. 2.) c. 3.

coment il ad estat par mye luy; jugement si par tiel fet en sa mayn use nous puse de ceste accion ouster.—HILLAR. Il ad respondu com tenaunt del enter, et ad accepte le bref, et vous ne responez rien a ceo qe il ad dit, par quei il demande jugement coment il deit departir.—*Pole.* Sil fut a voucher, et a derener un garrantie, le vouche luy oustereit par taunt qe la garrantie estendy a ij.—SCH. Si ij. purchacent a eux et a lour heirs assignes, celuy qe survivera avera le garrantie de tut, ou si lun relest al autre il avera la garrantie de tut; par quei, qaunt vous deditez mye qe il est tenaunt del enter, il piert qe il avera la avauntage par ceo fait, et a vostre entre en dreit de la moyte vous serrez barre.—*Pole.* Jeo ne serray barre de nul parcel qaunt soun respouns nest pas respouns.—HILLAR. Si lun disseise lautre il navera jammes la garrantie de tut soul, &c. A.D. 1339.

(28.)[1] § Bref fut porte vers Robert, et Isabele sa femme. Ils fesoient defaute apres defaute.—*Pole.* Vous avez cy un W. qe vous dit qe il lessa la tere a Robert et Margerie sa femme, qest nome par noun de Isabele, (et est mesme la persone &c.) a terme de lour ij. vies &c., et par lour defaute nous prioms destre resceu a defendre nostre[2] dreit.—*Kels.* Le bref est porte vers Robert et Isabele sa femme, et il covent qe vostre priere soit acordaunt al Original, et ceo nest il mye &c. Et si ele od soun baroun feusent a porter un bref foundu sour statut, &c, il covendreit qe le bref feut acordaunt al primer Original sour quel cestuy bref serroit foundu, ou altrement le bref ne vaudreit rienz. Nient plus ne put cest resceite estre suffert saunz ceo qe il soit acordaunt al Original.—HILLAR. Sil ne soit resceu ensiwereit un graunt meschef, qar le demandaunt mesnomereit la femme, et par assent entre le demandaunt et le baroun et sa femme, issint qe il serreit ouste de sa resceite.—SCH. Si nous resceivoms la femme par autre noun qele nest nome, homme

Prier destre resceu.

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[1] From 16560 alone as far as the point at which the larger type ends.

[2] MS. lour.

A.D. 1339. named, the writ will be abated; and besides, if it be as he says, if they are ousted by us, they will have an assise.

Formedon. § John de Horneby brought a writ of Formedon against Thomas and Joan his wife who made default after default. Thereupon came John Stedeman and showed that he leased the tenements to Thomas, against whom &c., and Margery his wife, which wife in this writ is called Joan, for their lives, the reversion to himself, and he prayed to be received.—*Pole.* We pray seisin by reason of the default of those who are named in our writ, on whose default he does not pray to be received. —SCHARDELOWE. There is no reason that by your bad writ he should be ousted from defending his right.—*Pole.* He can not be received if the writ be not abated; besides, if it be as he states, we shall not recover against these tenants, for they can have an assise if they be ousted.

—Afterwards he was nonsuit.—*Quære.*

Ravishment of Ward. (29.) § Ravishment of Ward against a woman who made protestation that she did not acknowledge the ravishment, but said that he whose heir the plaintiff supposed to be ravished, and whom the plaintiff supposed to be his tenant, devested himself of the tenements by reason of which &c. in favour of her and of him whom the plaintiff supposed to be ravished, to hold to them and to the heirs of one of them; so he did not hold of the plaintiff on the day when he died; ready &c.—And the other side said the contrary—that he did hold of the plaintiff.

Ravishment of Ward. § Robert de W. brought a writ of Ravishment of Ward against B.—*Pole.* We make protestation that we do not acknowledge the ravishment, but we tell you that the infant's ancestor and ourselves purchased jointly; judgment whether you can have an action against us.

Note in a case of Ravishment of Ward. § It was asked of BASSET and SCHARDELOWE whether one might have a writ of Ravishment of Ward without seisin. And they said that it was no plea to say the plaintiff was not seised of the wardship &c. And the defendant offered to aver that the ward was not ravished. And the Inquest shall not be received to say that the plaintiff was not seised at the time of the ravishment, for it is comprised in his writ that he was seised &c.

abatera soun bref; et od ceo, sil soit auxi com il dit, sils soient oustez par nous, il averount lassise. A.D. 1339.

§ Johan[1] de Horneby porta bref de forme de doun vers Thomas et Johan sa femme, qe firent defaute apres defaute. Survient Johan Stedeman, et moustra qil lessa les tenementz a Thomas vers qi &c., et Margerie[2] sa femme, quele femme par ceo bref est nomee Johane, a lour vies, la reversion a lui, et pria destre resceu. —*Pole.* Nous prioms seisine par defaute de ceux qe sont nomes en nostre bref, par qi defaute il ne prie pas.—Sch. Par vostre malveis bref il nest pas resoun qil soit ouste a defendre son dreit.—*Pole.* Il ne poet estre resceu si le bref ne soit abatu; ovesqe ceo, sil soit issi come il dit, nous recoveroms pas vers ceux tenantz, qar ils pont aver assise sils soient oustes. Forma Donationis.

—Puis[3] il fut nounsuy.—*Quære.*

(29.)[4] § Ravissement de garde vers femme qe fesoit protestacion qele ne conisast pas le ravisement, mes dit qe celui, qi heir il suppose estre ravy et qil suppose estre son tenant, se demyst de les tenementz par resoun de queux, &c., a lui et a celui qil suppose estre ravy, a eux et les heirs lautre; issi ne tient il pas de lui jour qil morust; prest &c.—*Et alii e contra,*[5] qil tient de lui. Ravissement de Garde.

§ Robert[6] de W. porta bref de Ravisement de Garde vers B. —*Pole.* Nous fesoms protestacion qe nous ne conusoms pas le ravisement, mes vous dioms qe launcestre lenfaunt et nous purchaceames joyntes; jugement si devers nous accion poiez aver. Ravisement de Garde.

§ Demande fut de Bass. et Schrd. si homme purreit aver bref de Ravisement de Garde saunz seisine. Et ils disoient qe il ne fut nul plee a dire qe il ne feut pas seisi de la garde &c. Et il tendy daverer qe il ne fut ravy. Et lenqueste ne serra mye resceu a dire qe il ne fut pas seisi al temps del ravisement, qar en son bref est compris qe il [fut] seisi &c. Nota en Ravissement de Garde.

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[1] This report of the case is from T., L., and 25184.

[2] 25184, Margarete.

[3] L. and 25184, Qar.

[4] From T., L., and 25184.

[5] In 25184 the case ends here.

[6] This and the following paragraph, which may possibly have relation to the case next above, are from 16560 alone, in which MS. they are separated by intervening cases.

A.D. 1339. Annuity.

(30.) § Annuity, for the Abbot of Croyland, where he counted of a grant made by the ancestor of the defendant in the time of King John. And it was expressed in the deed that he granted the annuity to be taken from a mill.

Præcipe quod reddat.

(31.) § "Command J. and Joiosa" his wife.—*Gayneford.* Judgment of the writ, for the wife is named Jocosa and not Joiosa; and this gives no information to identify the person.—*Pole.* She appears by guardian, who can not plead misnomer.—HILLARY. He can, as well as she could in person.—And so note that there is a difference between appearance by guardian and appearance by attorney. And HILLARY abated the writ.

Debt.

(32.) § Writ of Debt for the heir of him to whom the obligation was made (to him and to his heirs) against the heir of the debtor who pleaded that he had nothing by descent in fee simple. — *Pole.* Assets descended to you; ready &c.—SCHARSHULLE. You must say that he now has assets, or that he had since your writ was purchased.—*Pole.* He has assets in fee simple (and he said where); ready &c. — And the other side said the contrary.

Formedon.

(33.) § Formedon, where the demandant counted that A. gave to B. for his life, with remainder over to the ancestor of the demandant and to the heirs of his body &c., and that after the death of the tenant for term of life and of the demandant's ancestor to whom the remainder was limited, the descent ought to be to him as son and heir.—*Pole.* He demands by way of remainder; judgment whether he ought to be received without a specialty.—SCHARDELOWE. His ancestor was seised, so the

(30.)[1] § Nota.[2] Annuite pur Labbe de Croiland,[3] ou il counta dun grant fait par launcestre le defendant en temps le Roi Johan. Et le fait voleit qil graunta a prendre dun molyn. A.D. 1339. Annuite.

(31.)[1] § *Præcipe J. et Joiosæ*[4] sa femme. — *Gaym.* Jugement du bref, qar la femme ad a noun[5] Jocosa et ne mi Joiosa,[6] car ceo doune pas[7] entendement. — *Pole.* El est par gardein et ne poet pleder a mesprision[8] del noun. — HILLARY. Si poet, auxi bien come ele mesme. — *Et sic nota* qe cest autre de gardein qe dattourne. Et il abatist le bref. Præcipe quod reddat. [Fitz. *Attourne*, 75.]

(32.)[1] § Bref de Dette pur leir celui a qi lobligacion fust fait a lui et a ses heirs, vers leir le dettour, qe pleda qil navoit rien par descente en fee simple.— *Pole.* Assetz vous descendirent; prest &c.—SCH. Vous dirrez qil ad ore assetz, ou qil avoit puis vostre bref purchace.—*Pole.* Il ad assetz en fee simple (et dit ou); prest &c.—*Et alii e contra.* Dette. [Fitz. *Dette*, 140.]

(33.)[9] § Forme de doun, ou il counta qe A. dona a B. a[10] sa vie, le remeindre outre al auncestre le demandant et a les heirs de son corps &c., et qe,[11] apres la mort le tenant a terme de vie[12] et son auncestre a qi le remeindre fust taille, a lui come a fitz et heir descendre deit &c. — *Pole.* Il demande par voie de[13] remeindre; jugement si sanz especialte deive estre resceu. — SCHD. Son auncestre fust seisi, issi le re- Forma Donationis. [Fitz. *Monstrans de Faits*, &c. 67.]

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[1] From T., L., and 25184.

[2] Nota is in 25184 alone.

[3] 25184, Crailand.

[4] L., *Josiæ*; 25184, *Joyosæ*.

[5] L., conu instead of a noun.

[6] The words et ne mi *Joiosa* are in T., but not in L., nor in 25184.

[7] L., deive par instead of doune pas.

[8] L., meinprisoun.

[9] From T., L., 16560, and 25184.

[10] 16560, un B. dona a terme de, instead of A. dona a B. a.

[11] qe in 16560 alone. In the other MSS., les queux.

[12] The words a terme de vie are not in 16560.

[13] 16560, par resoun dun remeindre, instead of par voie de remeindre.

A.D. 1339. remainder is vested; therefore he has no need to show a specialty; and if it had been a fee simple he could have had the Mort d'Ancestor; and at common law if in this case he had brought the Mort d'Ancestor he would have been received; why then not now to this writ? And in the case of a rent charge, where the ancestor was seised, the heir shall be received without a specialty.—*Pole.* The seisin of his ancestor shall be understood as only an abatement if he do not show a specialty.—SCHARDELOWE. It used not to be doubted that in this case one should be received without a specialty.—STONORE. At common law, where land was given in fee tail, after the tenant had issue he could aliene, and, if he died seised, his heir would have the Mort d'Ancestor, and he would never be driven to put forward a deed though his father's estate was by remainder in fee tail, &c.

Note. (34.) § Note that one vouched to warranty one W. —*Pole.* He is in possession of the land as cousin and heir of W.; judgment whether to this voucher &c.—INGE. That is tantamount to saying that W. is dead. Let the voucher stand.

False Judgment. (35.) § A writ of False Judgment was brought against two tenants. At the Grand Distress one came and the other made default; and an *Alias distringas* issued against the latter, and the same day was given to the other. And on another day he who had previously appeared was essoined; and, because the Grand Distress had previously issued for his default, the essoin was quashed.

meindre vestu; par quei il nad mester;[1] et sil fust fee simple il purreit aver eu le mortdauncestre; et[2] a la comune ley, sil ust porte en cest cas le mortdancestre, il ust este[3] resceu; par quei donqes nient ore a cest bref? et en rentecharge ou[4] launcestre fust seisi leir serra resceu sanz especialte.—*Pole.*[5] La seisine soun auncestre serra entendu forsqe soulement[6] abatement sil ne moustre especialte.—SCH. Il ne soleit pas estre doute qil ne serreit en ceo cas[7] resceu sanz especialte.—[STON. A la comune ley, la ou terre fut done en fee taille, apres ceo qe le tenaunt avoit issue il poeit aliener, et, sil mourust seisi, son heir avereit le Mortdauncestre, et jammes ne serreit il chace de mettre avaunt fet mes qe lestat son pere fut par remeindre en fee taille &c.][8] A.D. 1339.

(34.)[9] § Nota qun voucha a garrant un W.—*Pole.* Il est einz en la terre come cosyn et heir W.; jugement si a cest voucher &c.—INGE. Tant amount qe W. est mort. Estoise le voucher. Nota.

(35.)[9] § Bref de faux jugement fust porte vers ij. tenantz. A la grant destresse lun vient et lautre fist defaute, et *Distringas sicut alias* issit vers lui, et *idem dies* done fut a lautre. Et a un autre jour celui qe aparust devant fust essone; et, purceqe devant le grant destresse fust issu par sa defaute,[10] lessone fust quasse.[11] Faux Jugement. [Fitz. *Essone*, 20.]

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[1] T., moustre.

[2] 16560, et il serreit resceu saunz especialte a ceo bref; pur quei ne mye en cestuy bref come en le Mortdauncestre?, instead of the passage et . . . . bref?

[3] T., duist estre, instead of ust este.

[4] 16560, la ou rente est done en fee taille, instead of ou launcestre fust seisi.

[5] For *Pole's* speech is substituted in 16560 the following:—ALD. La cause est pur ceo qe il est prive al don.

[6] soulement is in 25184 alone.

[7] The words en ceo cas are not in 16560.

[8] The words between brackets are in 16560 alone.

[9] From T., L., 16560, and 25184.

[10] The words par sa defaute are not in 16560.

[11] See No. 45.

A.D. 1339.
Dower.

(36.) § Dower, where the heir of the husband in chivalry, and he and his brother as heirs in socage were vouched. The Sheriff returned, as to the younger, that he had no land in which he could be summoned. And the elder was summoned and did not come. The *Cape ad valentiam* issued &c. And, as to the other, (the younger) it was commanded that he should be summoned in the land which he had of his inheritance by descent on the day of the voucher. And the *Sequatur suo periculo* was entered; to which writ the Sheriff returned that he had nothing by descent on the day of the voucher, but that he had afterwards purchased the lands in which he was summoned; and this by judgment was held to be no summons, for it was without warrant. It would have been otherwise if the Sheriff had returned simply that he was summoned without specifying in what particular lands. Wherefore as to him the tenant lost his warranty. And as to the elder, he came by guardian when the *Cape* was returnable. And, because his warranty was not accordant with the original writ, the default was recorded; and the woman who was demandant prayed seisin of the land against the tenant. — BASSET. The COURT adjudges that you recover a moiety against him who was vouched and did not come when the *Cape* was returnable, if he have assets, and, if he have not, that you recover the whole against the tenant.—And note that, by the opinion of the COURT, if the summons against the younger brother had been held good, judgment would not have been had against the elder by his default until the other had lost by his default, or upon discussion on the warranty; for it was not known whether he had assets by descent or not, when perchance the other had assets.

(36.)[1] § Dower, ou leir le baroun[2] en chivalerie,[3] et lui et son frere come heirs de sokage furent vouchez. Le Vicounte retourna, qant al puisne, qil navoit rienz ou estre somons. Et leisne fust somons et ne vient pas. *Cape ad valentiam* issit &c. Et, qant al autre, comande fust qil fust somons en la terre qil avoit par descente de heritage jour del voucher. Et le *Sequatur suo periculo* fust entre; a quel bref le Vicounte retourna qil navoit rien par descente jour de voucher, mes[4] puis il avoit purchace les terres en queux[5] il est somons; et ceo par jugement fust agarde nul somons, qar ceo fut[6] sanz garrant. *Secus fuisset* sil ust retourne simple somons sanz determiner en certeine terre. Par quei en dreit de celui le tenant perdist[7] sa garrantie. Et qant al eisne il vient par gardein al *Cape* retournable. Et, purceqe son garranti fust desacordant al original, la defaute fust recorde; et la femme demandante pria seisine de terre[8] vers le tenant.—BASS. La COURT agarde qe vous recoverez la moite vers celui qest vouche et qe ne vient pas al *Cape* retournable, sil eit assetz, et, si noun, qe vous recoverez lentier vers le tenant.—*Et nota per opinionem* CURIÆ, si la somons vers le puisne ust este agarde bon, qe jugement nust pas este fait vers leisne par sa defaute tanqe lautre ust perdu par sa defaute, ou sur discussioun de la garrantie; qar[9] homme ne savoit lequel il avoit par descente ou nient, ou par cas lautre ad assetz.

A.D. 1339.

Dower.

[Fitz. *Jugement*, 170.]

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[1] From T., L., 16560, and 25184.

[2] The words le baroun are not in T.

[3] The words en chivalerie are not in L.

[4] T., et.

[5] T., en quex terres, instead of les terres en queux.

[6] The words ceo fut are in 16560 alone.

[7] In 16560 the case ends here.

[8] The words de terre are in 25184 alone.

[9] L., quant.

A.D. 1339. Quare Impedit.

(37.) § *Quare impedit* by W. Herle, in respect of the church of Bolton, in which he counted that the church in the time of a certain King was vacant, on which vacancy a dispute arose between A. and B., so that then an agreement was made that A. and his heirs should present on that vacancy, and B. and his heirs on the second vacancy, and so on interchangeably &c.; and he said that on that vacancy, on account of the time having passed, the Ordinary presented in right of A., by the death of whose presentee the church became vacant, and then B. presented &c., by the death of whose presentee the church is now vacant; and then he showed how W. purchased from the heir of A. an acre of land and the interest that A. had in the advowson. And thus it belongs to W. to present. — *Parning* rehearsed, and could not deny, and said that he had not disturbed.—*Pole.* Ready &c. that you have.—HILLARY to *Parning.* You will be in mercy. — *Parning.* Not so, for we have not disturbed.

(38.) § Wardship, where the count was counted simply. —*Kelshulle* took exception to it, because the plaintiff had nothing in the services except by the curtesy of England, in which case he ought to count according to his case; judgment of the count. — *Pole.* You do not claim anything, nor do you deny that he holds of us by knight-service; wherefore &c. — *Parning.* If you were to make a simple avowry, the avowry would abate; so here. And a woman tenant in dower, in service, will have a writ of Wardship and must count according to her case.—HILLARY. She can not say that the tenant died in her homage, as tenant by the curtesy of England can. — SCHARDELOWE. There is no doubt that he might have counted better, but it may be as well that the defendant plead over, and that henceforth whoever counts in such a case should be

(37.)[1] § *Quare impedit* par[2] W. Herle del eglise de Boultone, ou il conta qe leglise en temps de certein Roi fust voide, sur quele voidance debat fust entre A. et B. issi qe adonqes composicion pris qe A. et ses heirs a cele voidance, et B. et ses heirs a la secunde presentereint, et issi entrechaungeablement &c.; et dist qe a cele voidance, par temps passe, Lordiner presenta en le dreit A., par qi mort leglise se voida, et puis B. presenta &c., par qi mort leglise est ore voide; et puis moustra coment W. purchacea del heir A. une acre de terre et ceo qil avoit en lavoesoun; issi appent a lui a presenter. — *Parn.* rehercea et ne poet dedire, et dist qil navoit pas destourbe. — *Pole.* Prest &c. qe si. — HILLARY a *Parn.* Vous[3] serrez en la mercie. — *Parn.* Nanil, qar[4] nous navoms pas destourbe. A.D. 1339 Quare Impedit.

(38.) § Garde, ou le counte fust counte simplement. — *Kels.* la chalengea, pur ceo qe le pleintif[5] nad en les services fors par courtesie Dengleterre, en quel cas il countereit solonc son cas; jugement du count. — *Pole.* Vous ne clamez rienz[6] ne dedites pas[7] qil ne[8] tient de nous par service de chivaler; par quei &c. — *Parn.* Si vous faissez[9] avowerie simple, lavowerie abatereit; auxi issi. Et femme tenant en dower en service avera bref de garde et countera solonc son cas. —HILL. Ele ne poet pas dire qe le tenant morust en son homage, come tenant par la ley Dengleterre poet. —SCH. Nest pas doute qil ne poet meuth[10] aver counte, mes bien est qils dient outre[11] et qe autrefoitz qi qe [Fitz. *Garde*, 39.]

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[1] Nos. 37–60, inclusive, are from T., L., and 25184.

[2] 25184, vers.

[3] T., Ne.

[4] The words Nanil qar are not in T.

[5] 25184, qil, instead of qe le pleintif.

[6] rienz is not in T.

[7] pas is not in 25184.

[8] ne is not in 25184.

[9] T. fuissetz.

[10] L., meinz; T., moultz.

[11] 25184, qe vous diez, instead of qils dient outre.

A.D. 1339. warned.—And afterwards the count was adjudged good. — *Kelshulle.* The infant's ancestor held of us, and of those whose estate we have, a carucate of land, by a feoffment prior to that by which he held of you or of those whose estate you have, ready &c.—*Gayneford* replied that he held of the plaintiff and of those whose estate he has by a prior feoffment &c.—And by judgment the averment was received in this manner.—And so note the Statute.[1]

Avowry. (39.) § Avowry for suit to the court of the avowant's manor, and he laid the seisin by the hand of his brother.—*Pole* made protestation that he did not admit the seisin of the brother, and said that the tenements from which &c. are in Abingdon, which is a borough town, and the tenements are only one messuage which he holds of the avowant as in gross by itself, and the avowant holds it over of the Abbot of Abingdon as in gross, and holds the manor to which he supposes our services to be regardant by other services as in gross. Thus our services are not regardant to the manor to which he supposes the suit to be due; judgment whether for suit to the court of that manor &c.—*Trewith.* Do you intend this to be your answer?—ALDEBURGH. You must answer to the seisin of his brother on which his avowry is founded.

View demanded. (40.) § *Præcipe quod reddat,* where the tenant, after he had the view, vouched, and afterwards came and demanded the view, and it was granted to him, and he had a day over.—And *Pole* said that the process was discontinued, for the voucher (the suing out of which was analogous to suing out an original) was not pursued.—HILLARY. The tenant has a day with the demandant, and what was before done in delay of the demandant is to the advantage of the tenant; wherefore he can

[1] 13 Edw. I. (Westm. 2.) c. 16.

contera en le cas soit garny. — Et puis le count fust agarde bon. — *Kels.* Launcestre lenfant tient de nous une carue de terre de eigne feffement, et de ces qi estat nous avoms, qe de vous ou de ceux qi estat vous avez; prest &c.—*Gayn.* replia qil tient del pleintif et ces qi estat &c. par eisne feffement &c.—Et par agard laverement fust resceu par cest manere.—*Et sic nota statutum.* A.D. 1339.

(39.) § Avowerie pur suyte a la court de soun manere, et lia seisine par la mayn son frere. — *Pole* fist protestacion qil ne conust pas la seisine son frere, et dit qe les tenementz dont &c. sont en Abyngdone, qe est[1] ville Burghe, et les tenementz ne sont qun mies quel il tient del avowant come un gros a per[2] lui, et lavowant le tient outre del Abbe de Abyngdone come un gros, et tient le manere a quel il suppose noz[3] serviz estre regardants[4] par autre service come un gros. Issi ne sont pas noz serviz regardantz al manere a quel il suppose la suyte estre duye; jugement si pur suyte a la court de cel manere &c.—*Trew.* Voillez ceo pur respons?—ALD. Il covient qe vous responez a la seisine son frere sur quei savowerie est foundu. Avowri.

(40.) § *Præcipe quod reddat,* ou le tenant apres ceo qil avoit la vewe, voucha, et puis vient et demanda la vewe, et ceo lui fust grante, et avoit jour outre.—Et *Pole* dist qe le proces fust discontinue, qar le voucher ne fust pas pursuy, quele suyte fust auxi come original. — HILLARY. Le tenant ad jour ove le demandant, et ceo qest fet[5] devant en delay del demandant chiet en avantage del tenant; par quei il Vewe demande. [Fitz. *Discontinuance Divers,* 6.]

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[1] The words qe est are not in T.
[2] 25184, par, instead of a per.
[3] 25184, les.
[4] T., agardanz.
[5] T., fust.

A.D. 1339. not allege discontinuance.—*Pole.* We demand the view. —*Gayneford.* You have had it.—HILLARY. Not because you granted it; wherefore let him have the view.

Voucher. (41.) § Voucher, in Dower, of a husband and his wife. — *Gayneford.* They never had anything since the seisin of our husband. — *Kelshulle.* You must say that neither they nor their ancestors had. — *Gayneford.* They and the ancestors of the wife had nothing, as above; ready &c.—And that was sufficient.—*Kelshulle.* The wife was seised; ready &c.—And the other side said the contrary.

Judgment. (42.) § Judgment in a case in which a writ of Debt had been brought against the Sheriff, because he allowed the recognisor by Statute Merchant to go at large, as appears above, in Hilary term.—*Parning* now offered to aver that the Sheriff did not allow him to go at large.—And he could not be received to this. — BASSET. Because it is expressed in the Statute[1] that the Sheriff shall not allow the prisoner to go at large, and you have not denied that he was at large, the COURT adjudges that the plaintiff recover his debt. — *Stouford.* We pray our damages; for in every case one shall recover damages upon a writ of Debt; and if one bring a writ of Debt on an obligation by Statute Merchant the defendant shall render him damages. — HILLARY. The action for debt is given at common law, but here it is by statute which does not give damages. — And afterwards the plaintiff recovered damages, taxed by the COURT at 100*s*.—And so note.

Note. (43.) § Note that a Resummons upon a writ of Wardship was sued against the executors of the defendant who died pending the writ; and the Sheriff, returned to the Grand Distress that they had nothing in the

[1] 13 Edw. I. st. 3, according to which it is the keeper of the prison who must answer.

ne poet alegger discontinuance. — *Pole.* Nous demandoms la vewe. — *Gayn.* Vous lavez eu. — HILLARY. Nient pur[1] ceo qe vous[2] le grantastes; par quei eit la vewe. A.D. 1339.

(41.) § Voucher en dower del baron et sa femme. —*Gayn.* Ils navoient unqes rien puis la seisine nostre baron.—*Kels.* Vous dirrez[3] qe eux ne lour auncestres. —[*Gayn.* Quex et les auncestres][4] la femme navoint rienz, *ut supra;* prest &c.—Et ceo suffist.—*Kels.* Qe la femme fust seisi; prest &c.—*Et alii e contra.* Voucher. [Fitz. *Counterple de Voucher,* 74.]

(42.)[5] § *Judicium,*[6] ou bref de dette porte vers le Vicounte, qe[7] suffri le conisour par statut marchand aler a large, *ut supra, termino Hillarii.—Parn.* tendi ore daverer qil nel suffri pas aler a large. Et ne poet a ceo estre resceu.—BASS. Purceqe le statut voet qe le Vicounte ne suffra[8] pas le prisone[9] aler a large, et vous navez pas dedit qil fust a large, si agarde la COURT qil recovere sa dette. — *Stouf.* Nous prioms noz damages; qar en chescun cas homme recovera damages en bref de dette; [et si homme portera bref de dette][10] par obligacion sur statut marchand il rendra soun damage. — HILLARY. Laccion la est done a la comune ley, mes issi par statut qe ne doune pas damages. — Et puis il recoveri damages taxez par la COURT a C. souldz.[11]—*Et sic nota.* Judicium.

(43.) § Nota qe resomons en bref de garde fust suy vers les executours le defendant qe morust pendant le bref; et le Vicounte a la grant destresse retourna qils Nota. [Fitz. *Proses,* 33.]

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[1] T., puis.

[2] In T. ceo is inserted after vous.

[3] L., Nous dirroms.

[4] The words between brackets are not in 25184.

[5] This is the conclusion of Report No. 33 of the previous Hilary Term; in 25184 the whole is placed in that term.

[6] The word *Judicium* is not in L.

[7] T., et.

[8] T., suffri.

[9] L., Vicounte.

[10] The words between brackets are not in T.

[11] L., marcz.

A.D. 1339. county; and by a *testatum est* it was testified that they had in another county; and process was sued there. And *Parning* came and rehearsed the process, and said that the suit made in another county was not warranted by the Statute;[1] wherefore he prayed the Proclamation in the first county, where the Sheriff testified that they had nothing, for no other process is given by Statute.—And the COURT granted it.

Note. (44.) § Note. Where three persons by attorney, in a plea of land, waged their law in respect of non-summons, when they should have made their law, one was adjudged to be under age and thus incapable of performing his law; and the whole writ abated.

False Judgment. (45.) § A writ of False Judgment was brought against two persons in respect of a judgment given upon a writ of Right. At the Grand Distress one of them did not come; the other came and took a day over by *Idem dies.* And the Distress issued against the one; and on the day he who had previously made default appeared, and the other who had appeared caused himself to be essoined. And the essoin was quashed, because previously, for his default, the Grand Distress had issued; besides, if the essoin had been adjudged they might have fourched by essoin.—*Parning* assigned the errors. —*Pole.* You shall not be received to assign error, for the Court has not yet the full record, because the original writ is not here, without which it can not be called a record; for if they held the plea and gave judgment without original, the execution would be really a disseisin for which an assise is maintainable.—SCHARSHULLE. There is a judgment, such as it is, while it stands in force; and that which is now here in Court is avowed by the suitors, and the original writ ought to

[1] 13 Edw. I. (Westm. 2.) c. 35.

navoint rienz en la counte;[1] et *per testatum*[2] *est* fut temone qils avoint en un autre counte; proces fust suy illoqes. Et *Parn.* vient et rehercea le proces, et dit qe la suyte fait en autre counte ne fust garranti par lestatut; par quei il pria la proclamacion en le primer counte, ou le Vicounte tesmoigna qil navoit rien, qar autre proces nest done par statut. — *Et* CURIA *concessit.* A.D. 1339.

(44.) § Nota. Ou iij. par attourne en plee de terre gagerent lour ley de noun somons, qant ils duissent aver fait lour ley, un fust ajuge deinz age qe ne poet parfornir[3] la ley; et tut le bref abatist. Nota. [Fitz. *Ley*, 50.]

(45.)[4] § Bref de faux jugement fust porte[5] dun jugement qe se fist sur un[6] bref de dreit vers ij. A la grant destresse lun ne vient pas; lautre vient et prist jour outre par *idem dies.* Et destresse issit vers lautre; a quel jour celui qe fist defaute avant apparust, et lautre qapparust se fist essoner. Et fust quasse, pur ceo qe devant par sa defaute la grant destresse fust issue; ovesqe ceo, si[7] lessone fust ajuge ils puissent forcher par essone. — *Parn.* assigna les errours.—*Pole.* Vous ne serrez nient resceu dassigner errour, qar la Court nad pas uncore plein record, purceqe le bref original nest pas icy, sanz quel ceo ne poet estre dit record; qar sils tindrent le plee et firent jugement sanz original, lexecucion fust proprement un disseisine de quei assise est meintenu.—SCH. Il y ad jugement tiel quel tanqil esta en sa force; et ceo qest ceinz est avowe par les suyters, et le bref Faux Jugement.

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[1] MSS., garde.

[2] T. *protestum*, instead of *per testatum.*

[3] L. and 25184, furnir.

[4] See No. 35.

[5] The words fust porte are not in 25184.

[6] 25184, dun instead of sur un.

[7] si is not in 25184.

A.D. 1339. remain with you who were demandant; and then it would be a strange thing to distrain the suitors to deliver the writ which you have.—*Pole.* It is true that, pending the plea, the patent remains with the demandant, but when judgment is to be given, the Court will not give judgment until the patent be delivered to them; and if they do otherwise it is without warrant. —SCHARSHULLE. And although they ought to have had possession of the writ, and have it not, but you have it, that is only an error and a mistake, which ought by course of law to be redressed. — And afterwards the party was told by the COURT that he might sue a writ, at his own peril, against whomsoever he might choose, to have the original on another day.—And so he did.—*Quære* against whom?

Dower. (46.) § A writ of Dower was brought against one who made default. Thereupon came one who showed that a woman held the same tenements in dower of his heritage, which woman had leased her estate to the person who made default, and so the reversion was to him, and he prayed to be received.—*Pole.* You show that he is not your tenant either for term of life or in dower; for according to your statement the woman still remains your tenant in dower, against whom and against no one else you shall have your writ of Waste; wherefore we pray seisin of the land.—Notwithstanding, the COURT by common consent received him.— And then he made his attorney and traversed the action.—And on another day, upon another writ, he who prayed to be received was vouched to warranty as one under age. And he came now by process to be viewed, and he was adjudged to be of full age. And he would have warranted immediately to the tenant of his own accord, and by the assent of the parties.—SCHARSHULLE. You have a day only for the purpose of being viewed by the Court, and not for the purpose of warranting.—SCHARDELOWE. No

Receipt.

original deit demorer vers vous qe fustes demandant; et donqes a destreindre les suyters a liverer le bref qe vous avez il serreit merveille. — *Pole.* Veirs[1] est qe pendant le ple la patent demora vers le demandant, mes qaunt jugement est a rendre la Court ne durra pas jugement tanqe la patent lour seit livere; et sils facent autrement cest sanz garrant. — SCH. Et coment qils duissent aver eu le bref vers eux, et ils nount pas, mes vous lavez, ceo nest forsqe errour et mesprisioun, quel covient par cours de ley estre redresse. — Et puis fust dit par COURT a la partie qil suyst bref a quel qe il[2] voleit eslire a son peril daver loriginal a un autre jour.—*Et ita fecit.*—*Quære* vers qi? A.D. 1339.

(46.) § Bref de dower porte vers un qe fist defaute. Survint un et moustra qune femme tient en dowere mesmes les tenementz de son heritage, la quele femme ad lesse son estat a celui qe fist defaute, issi la reversion a lui, et pria destre resceu. — *Pole.* Vous moustrez qil nest pas vostre tenaunt a terme de vie nen dower; qar a ceo qe vous dites la femme uncore demoert vostre tenant en dower, vers qi et vers nul autre vous averez vostre bref de Wast; par quei nous prioms seisine de terre.[3]—*Non obstante,* CURIA par consentement lui receust.—Et donqes fist il son attourne et traversa laccion.—Et a un autre jour en un autre bref mesme celui qe pria fust vouche a garrant come deinz age. Et vient ore par proces destre vewe, et fust ajuge de plein[4] age. Et il voleit aver garranti de gree tant toust al tenant, et par assent des parties. — SCH. Vous navez pas jour fors destre vewe de Court, et noun pas de garrantir. — SCHD. Nient pluis avereit il

Dower. [Fitz. *Resceit,* 145.] Resceit. [Fitz. *Voucher,* 118.]

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[1] L., voire; 25184, voirs.

[2] 25184, qi qil, instead of quel qe il.

[3] The words de terre are not in 25184.

[4] L., deiuz, instead of de plein.

A.D. 1339. more would he have it on the first day when he was vouched; and yet he could then warrant; and there is no error in allowing him to warrant when the parties are willing to consent.—And nevertheless a *Summoneas ad warrantizandum* issued against him.

Aiel. (47.) § A writ was brought by two heirs for lands of which their common ancestor, that is to say, the grandfather of one, and cousin of the other, died seised; and one was non-suited and severed; and by the descent in the count it was proved that the common ancestor was grandfather of the one and great-grandfather of the other. — *Parning* took exception to the contrariety of the count, for in one part of the count he made the ancestor great-grandfather, and elsewhere cousin. — *Gayneford.* This is to the writ, which writ is affirmed as against the tenant, to whom you have warranted; and upon this writ I can not have any other count; and moreover, the form of the writ is that given in the Chancery. — SCHARSHULLE by judgment abated the writ.

Note: Protection upon Venire Facias. (48.) § Note that upon a *Venire facias* sued in the King's Bench against one to show why he had sued on a Statute Merchant, contrary to his deed, a Protection was put forward by the defendant.—WILLOUGHBY. This suit is in lieu of an answer which the obligor could have had against an execution on the Statute, and the obligee is warned to maintain his suit on the Statute, and so to be a plaintiff; wherefore we disallow the Protection.

Note. (49.) § Note that upon a writ of Account the Sheriff returned to the *Capias*, "I send to you the body, by "such an one"; and the body was not sent. The plaintiff prayed that the Sheriff might be amerced and that he might be charged as answerable for the body. And the COURT intended to have given this judgment, notwithstanding that a Protection was put forward for the

le primer jour qil fust vouche; et si purreit il donqes garrantir; et ceo nest pas errour de lui suffrir qant parties[1] se volent assentir.—*Et tamen Summoneas ad warrantizandum* issit vers lui. A.D. 1339.

(47.) § Bref fust porte par ij. heirs dont lour comune auncestre, cest a saver del lun lael et le cosyn de lautre, morust seisi; et lun fust nounsuy et severe; et par la descente en le counte fust prove qe le comune auncestre fust ael al un et besael al autre. —*Parn.* chalengea la contrariouste del count, [qar en le un lieu del counte][2] il fist launcestre besael, et en un autre lieu cosyn.—*Gayn.* Cest au bref, quel bref est afferme vers[3] le tenant, a qi vous avez garranti; et autre count sur cel bref ne puis jeo aver; et uncore la forme du bref est tiel en la Chauncellerie.—SCH. par agard abatist le bref. Ayel. [Fitz. *Joindre en Accion*, 29.]

(48.) § Nota qen un *Venire facias* suy[4] en Bank le Roi countre un pur[5] quei il avoit suy un statut marchand countre son fet, un proteccion fust mys avant par le defendant. — WILBY. Ceste suyte est en lieu de respons quele il purreit aver eu encontre lexecucion de lestatut, et il est garni de meintenir sa suyte sour[6] lestatut, issi[7] destre actour;[8] par quei nous desalowoms la proteccion. Nota: Proteccion en Venire Facias. [Fitz. *Proteccion*, 71.]

(49.) § Nota qen bref dacompt, al *Capias* le Vicounte retourna, *Mitto vobis corpus* par un tiel, et il ne fust pas mande. Le pleintif pria qe le Vicounte fust amercie et qil fust charge de son corps. Et ceo jugement fust la COURT en purpos daver rendu *non obstante* qe proteccion fust mys avant pur le defendant.[9] Mes Nota. [Fitz. *Amercement*, 18.]

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[1] T., il instead of parties.
[2] The words between brackets are not in T.
[3] 25184, par.
[4] 25184, grante.
[5] 25184, sur.
[6] T., pur.
[7] issi is not in T.
[8] L., latour.
[9] L., defaute.

A.D. 1339. defendant. But afterwards the defendant came in his own person and put forward the Protection "because "he was about to set forth &c."; and this was after the party had counted and he had defended. — *Pole.* You have entered on the plea.—This objection was not allowed.—And afterwards a writ came to revoke the Protection; wherefore it was disallowed.

Formedon. (50.) § Formedon in the Descender, in respect of a gift made to a man and his wife and the heirs whom he should beget on the body of the wife. And the demandant was by the writ supposed to be only cousin and heir to the man. And he counted that both of his ancestors were seised as of fee and of right; and he made his descent from them in common; and in the clause "and which after the death" he followed his writ. — *Parning* took exception to the contrariety of the count.—*Gayneford.* The exception is to the writ.—*Parning.* It is not, for the words of the writ prove that the descent should be made only from the man; but you have not done so. — *Gayneford.* Heretofore we brought the like writ against you, which writ was abated for the non-tenure which you alleged; thus as to that point the writ is affirmed good &c.; judgment.—SCHARSHULLE. The other writ was abated as being faulty in respect of the non-tenure; and we adjudge this to be bad as being faulty in respect of matter; and be you in mercy.

Entry sur disseisin. (51.) § Entry, on a disseisin effected on the ancestor of the demandant. The wife, as tenant upon her receipt through the default of her husband, showed a deed by which one whose estate she had leased the same tenements to the ancestor of the demandant for term of his life; judgment whether he shall be received to say that he was seised as of fee. And because she was a stranger to the deed which she put forward, and also because at different times both estates might exist, the demandant

puis le defendant vynt[1] en propre persone et mist avant la proteccion *quia profecturus est;* et ceo fust apres ceo qe partie avoit counte et il avoit defendu. —*Pole.* Vous estes entre en plee.—*Non allocatur.*—Et puis bref vient de repeller la protection; par quei ele fust desalowe. A.D. 1339.

(50.) § Forme de doune en descendere,[2] dun doun fait a un homme et sa femme et les heirs qil engendreit del corps la femme. Et le demandant par bref[3] fust suppose soulement cosyn et heir al homme. Et il counta qe lun et lautre de ces auncestres fust seisi &c. come de fee et de dreit, et fist la descente en comune deux, et en le *et quæ post mortem* il pursuyst son bref.—*Parn.* chalengea la contrariousete del counte.—*Gayn.* Le chalenge est au bref.—*Parn.* Non est, qar les paroles du bref provent qe la descente serroit fait soulement del homme, mes issi navez pas fait.—*Gayn.* Autrefoitz portames autiel bref vers vous, quel bref fust abatu par nountenue qe vous alleggastes; issi qant a ceo point est le bref afferme bon &c.; jugement. — Sch. Lautre fust abatu par defaute de nountenue; et nous agardoms cest malveis par defaute de matere; et soiez en la mercy. Forma Donationis.

(51.) § Entre sur une disseisine fait al auncestre le demandant. La femme, tenant, par sa resceite, par la defaute son baron, moustra fait par quel un qi estat ele ad lessa al auncestre le demandant mesmes les tenementz a terme de sa vie; jugement sil serra resceu a dire qil fust seisi come de fee. Et pur ceo qele est estrange a cel fait quel ele mette avant, et auxi a divers temps ceo purreit estoier[4] ensemble, le de- Entre sur disseisine. [Fitz. *Estoppel,* 181.]

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[1] T., Et puis vient; 25184, fut, instead of vynt.

[2] The words en descendere are not in 25184.

[3] The words par bref are not in 25184.

[4] T., estre; 25184, ester.

A.D. 1339. was received to maintain his writ by general averment.

Trespass. (52.) § Note that upon a writ of Trespass, if the defendant come and surrender, when the Sheriff returns *non est inventus*, the COURT has no regard to his coming, and will not receive him to find mainpernors though the Exigent be not yet issued against him; and the plaintiff's essoiner can have (and had upon a writ of Account) a writ of *Capias* against the defendant, where he wished to have surrendered and to have found mainprise.

Præcipe quod reddat. (53.) § *Præcipe quod reddat* against two persons who put themselves upon the country. At *Nisi prius* one of them made default, and the Inquest passed without day, and the default was recorded in the Bench. The Petit *Cape* issued in respect of a moiety, and the other tenant had a day by *Idem dies;* on which day *Pole* rehearsed what had passed and said that the process was discontinued because process was not made against the Inquest. Notwithstanding, a new *Venire facias* was adjudged against the Inquest, because between the parties the process was well enough continued.

Voucher. (54.) § A writ was brought against two persons; one took upon himself the tenancy, and the other disclaimed, and the tenant vouched that other named in the writ, and the voucher was allowed. The Sheriff returned that he was dead. — *Pole.* Judgment of the writ; for the death of him who is named in it abates it. — STONORE. That is no reason; and you can revouch his heir.

Debt. (55.) § Note that on a writ of Debt brought against an alien Abbot, *Gayneford* counted that with the assent of his Convent he bound himself to the plaintiff by a deed which the latter put forward.—*Stouford.* The specialty purports to be dated in England, and it is not to be understood that the Convent could be there, nor conse-

mandant fust resceu de meintenir son bref par avere- A.D. 1339.
ment general.

(52.) § Nota qen bref de Trespas, si le defendant Trespas.
veigne et se rende qaunt le Vicounte retourne *non est inventus,* COURT nad nul regard a sa venue, ne lui voet accepter a trover maynpernours si lexigend ne soit issue devant sur lui; et lessoniour [1] le pleintif poet aver, et avoit en bref dacompt le *Capias* vers le defendant, la ou il se voleit aver rendu et trove maynprise.

(53.) § *Præcipe quod reddat* vers ij. qe se mystrent Præcipe quod reddat.
en pays. Al *Nisi prius* lun fist defaute, et lenquest passa sanz jour, et la defaute recorde en Bank. Le petit *Cape* issit de la moyte, et lautre tenant avoit jour par [2] *idem dies;* a quel jour *Pole* rehercea et dist qe le proces fust discontinue pur ceo qe proces nest pas fait vers lenquest. *Non obstante,* novel *Venire facias* fut agarde [3] vers lenquest, purceqe entre les parties le proces fust assez bien continue.

(54.) § Bref fust porte vers ij.; lun enprist la te- Voucher.
nance, et lautre desclama, et le tenant voucha lautre nome el bref, et le voucher soeffert. Le Vicounte retourna qil est mort. — *Pole.* Jugement du bref, qar sa mort qest nome labate.— STONORE. Ceo nest pas resoun; et vous poez revoucher son heir.

(55.) § Nota quen bref de Dette porte vers un Abbe Dette.
aliene, *Gayn.* counta qe del assent son covent il se obligea al pleintif par un fet quel il myst avant. — [Fitz. *Abbe,* 12.]
Stouf. Lespecialte purporte [4] date en Engleterre, et il nest pas entendable qe le covent purreit estre illoeqes,

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[1] T., lessone; 25184, le seignour.
[2] The words jour par are not in 25184.
[3] T., issit instead of fut agarde.
[4] L., porte.

A.D. 1339. quently that it could assent to this deed; judgment whether the law puts us to answer to this deed.—*Gayneford.* You do not deny this deed; and if you will deny it, ready &c. that it is your deed; judgment.—And so to judgment.—It was said by STONORE that the deed could not in any manner be understood to be the deed of the Convent, because the Convent could not be understood to be out of its Abbey. And this was the general opinion of the King's COUNCIL and all the JUSTICES.

Note. (56.) § Note that STONORE said that process should not in future be discontinued for such a slight matter as it had been,—as, for instance, the want of a letter or any small defect,—but that the clerks should amend the process when the defect was shown, because it was their fault. Wherefore in a Formedon, after the Inquest had passed for the demandant, when exception was taken as to the process being discontinued because according to the roll the tenant one day had an adjournment, before he put himself on the Inquest, by a surname different from that expressed in the original writ, that is to say the surname of another vill (though they were in a manner accordant) seisin of the land was unanimously adjudged.—*Parning.* The common law is not so; and you have no statute for the reverse.—SCHARSHULLE and WILLOUGHBY agreed with what had been said by STONORE, and they said, moreover, that if the parties had a day by prefixion, and a letter in the surname or a syllable was wanting, and afterwards, without exception having been taken, they took a day, and then were correctly named, as in this case, no one could be allowed afterwards to allege discontinuance.—*Parning.* It used to be the law that discontinuance might be alleged at any time during the plea.

nec per consequens assentir a ceo fait; jugement si a ceo fait la ley nous mette a respondre. — *Gayn.* Vous ne dedites pas ceo fait; et si vous le voillez dedire, prest &c. qe ceo est vostre fait; jugement.—*Et sic ad judicium.* — Par STONORE. Homme ne poet entendre en nul manere qe cest lour fait, pur ceo qe homme nentendra pas qe le Covent soit hors de lour Abbey. Et ceo fust comune assent du CONSEIL le Roi et touz les JUSTICES. A.D. 1339.

(56.) § Nota qe STONORE dit qe mes ne serreit proces de si leger discontinue qe ad este fait, come[1] par defaute dune lettre ou petit defaute, mes les clercz[2] amendroint le processe qaunt defaute est mostre, qar ceo est lour defaute. Par quei[3] en un fourme de doun, apres enqueste passe pur le demandant, le processe fust chalenge come discontinue purceqe le tenant par rolle par un jour avoit ajournement, devant qil se myst en enquest, par autre surnoun qe le bref original voleit, saver[4] par surnoun dautre ville, mes ils furent en manere accordante, et de comune conseil fust agarde seisine de terre.—*Parn.* Comune ley nest pas tiel; et vous navez nul estatut de le revers.—SCH. et WILBY assentoient al dit STONORE, et disoient outre qe si parties par prefixion avoint jour, et lettre en surnoun y faillist ou sillable, et puis sanz chalanger cela ils pristrent jour, et donqes fuissent bien nomes, come il est en ceo cas, il navendreit pas apres[5] dalegger discontinuance.—*Parn.* Il soleit estre ley qa chescun temps de plee homme alleggera discontinuance. Nota.

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[1] come is not in T.
[2] The word clercz is not in 25184.
[3] T. and L., qar.
[4] 25184, et, instead of voleit, saver.
[5] apres is in 25184 alone.

A.D. 1339. Note touching Outlawry.

(57.) § Note that a man who was outlawed on a writ of Account sued to reverse the record, and assigned for error that the Court adjudged the Exigent to be duly made, whereas the Sheriff had called him at four County Courts, and then it was expressed in the record that "afterwards on Wednesday after the Feast " of Saint John *Ante Portam Latinam* he was called " the fifth time," and it was not thereby determined with certainty whether it was on the next or some other Wednesday. Wherefore WILLOUGHBY adjudged the outlawry to be null, and sent the original defendant into the custody of the Warden of the Fleet until he should have accounted. — *Quære* how can he come out? for the record is in this place where he can not account.

Scire Facias.

(58.) § *Scire facias* upon an *Elegit* on two recognisances, where the defendant showed by a deed indented that the plaintiff agreed that if he should pay a certain sum of money on certain days the recognisances should be void, and said that he paid, and showed divers acquittances for the payment. — (*Quære* whether he could have averred the payment without acquittance?)—*Pole* imparled and returned, and as to four of the acquittances he said that they were not the plaintiff's deeds, and as to three he could not deny them.—*Gayneford.* This *Scire facias* is in lieu of a writ of Debt, and he has acknowledged that he has received part, and if this was while his suit was pending the writ is abated.—This was not allowed. —*Stouford* maintained that the deeds of acquittance were good.—But it was strange that the plaintiff wished to take issue on several deeds rather than on one of them; for if one of them be made or proved false the indenture is void; for if he failed in payment on one of the days, even though he paid on all the other days, the indenture is void.

(57.) § Nota qun homme utlage en bref dacompt suyst de reverser le record, et assigna pur errour de[1] ceo qe la Court agarda lexigend duement[2] estre fait la ou le Vicounte li avoit demande a iiij. countes, et puis le record voleit *quod postea die Mercurii post festum Sancti Johannis ante Portam Latinam quinto exactus,*[3] ou il ne fust pas determine en certein le quel le proscheyn Meskerdy ou autre. Par quei WILBY agarda lutlagarie pur nul, et li comanda en la garde munde de Flete tanqil ust acompte. — *Quære* coment il vendra hors, qar le record est en ceste place ou il nacountera[4] pas. A.D. 1339. Nota de Utlagarie.

(58.) § *Scire facias* hors dun *Elegit* sur ij. reconisances, ou le defendant[5] mostra par fet endente qe le pleintif granta qe sil paiast certeine summe de deners a certeins jours qe les reconisances serroint voides, et dist qil paia, et moustra divers[6] acquitances de la paie.—*Quære* sil poet aver avere la soute[7] sanz acquitance. — *Pole* emparla et revient; et qaunt a iiij. acquitances dedit les fetz,[8] et qaunt a iij. il ne poet dedire. — *Gayn.* Cest *Scire facias* est en lieu de bref de Dette, et il ad conu qil ad resceu partie, et si ceo fust pendaunt sa suyte le bref est abatu. — *Non allocatur.* — *Stouf.* meintient qe les fetz furent bones.[9] *Sed mirum fuit* qe le pleintif voleit prendre issue sur plusours faitz qe sur un fait; qar si un fet soit fait ou prove[10] faux lendenture est voide; qar, sil faillist de la paye a un jour, coment qil paia a touz les autres jours, lendenture est voide. Scire Facias.

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[1] T., pur.
[2] L. and 25184, nient duement.
[3] 25184, *acusatus.*
[4] T., navendra.
[5] 25184, le heir le defendant.
[6] The word divers is not in 25184.
[7] T., southe; 25184, paie.
[8] The words les fetz are not in 25184.
[9] L., dones.
[10] L., trove.

A.D. 1339. Covenant.

(59.) § Note that a writ of Covenant was brought in respect of a market, and *Kelshulle* wished to have drawn up the concord; but the COURT would not receive it, for a *Præcipe quod reddat* does not lie for that.—*Quære* what shall be done?

Assise of Novel Disseisin.

(60.) § Assise of Novel Disseisin in respect of the chapel of Bedford. The plaint was made for two messuages and three acres of land; and the tenant pleaded that one of these messuages was the chapel &c., and that the other messuage and the land were appendant to the chapel, which he held for term of life by the King's collation. And afterwards the King sent a writ to proceed. And the plaintiff said that it was the chapel, as above, which was of the collation of the Mayor and Bailiffs of Bedford, who gave it to him for term of his life, and thus he was seised until the tenant, making suggestion that it was of the King's collation, purchased from the King a collation and put himself in possession, and so disseised him &c. And by the King's writ *de procedendo* the assise was taken, which said as the plaintiff had stated. And a writ came that they should proceed to judgment on the verdict. And the parties were adjourned into the Bench. — *Parning.* The writ is abated, for you have it, by acknowledgment of the party, and by verdict, that this is a chapel, and that there is patronage thereof, in which case a plaintiff shall be named either Parson or Master of the chapel, and he is not so named. — HILLARY. You ought to have pleaded this.—*Parning.* There was no need, for the verdict has pleaded it and so has his own acknowledgment.—HILLARY. When he is ousted from all that which would constitute him Parson or Master, the case is other than as if he were seised of it in gross.—SCHARSHULLE (with the assent of his companions). It is not found that there has been institution; and the COURT has great regard to that; but it is found as

(59.) § Nota qun bref de Covenant fust porte[1] dun marche, et *Kels.* voleit aver trete la pees; et CURIA *noluit recipere,* qar *Prœcipe quod reddat* ne gist pas de cel.—*Quære quid fiet?* A.D. 1339. Covenant. [Fitz. *Fynes,* 68.]

(60.) § Assise de novele disseisine de la chapelle de la Bedeford.[2] La pleint fust fait de ij. mies et iij.[3] acres de terre; et le tenant pleda qe lun mies si est la chapelle &c., et lautre mies et la terre est appendant al chapelle, la quele il tient a terme de vie de la collacion le Roi. Et puis le Roi maunda bref daler avant. Et le pleintif dit qe cest la chapelle, *ut supra,* qest de la collacion le Mair et baillifs de Bedeford,[4] les qeux lui donerent a terme de sa vie, issi fust il seisi tanqe le tenant, fesant suggestioun qe ceo fust de la collacion le Roi, purchacea du Roi une collacion et se mist einz, issi lui disseisi &c. Et par bref le Roi *de procedendo*[5] lassise fust pris, qe dit come le pleintif avoit dit. Et bref vient qe sur verdit ils alassent a jugement. Et les parties furent ajournez en Bank.—*Parn.* Le bref[6] est abatu, qar vous avez par conisance de partie, et par verdit, qe ceo est chapelle, et de quei patronage y ad, en quel cas le pleintif serra nome ou persone ou meistre de la chapelle, et ceo nest il pas.—HILLARY. Ceo duissez vous aver plede.—*Parn.* Il ny ad force, qar verdit ad plede et sa conisance demene.—HILLARY. Qant il est ouste de tut qe lui freit persone ou maistre, il est autre qe sil fust seisi del groos.[7]—SCH. (*ex assensu sociorum*). Il nest pas trove qil y ad institucion; et de cela COURT ad grant regard; mes trove est *ut supra;* Assisa Novæ Disseisinæ. [13 Li. Ass. 2; Fitz. *Briefe,* 265.]

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[1] 25184, grante.

[2] T., de B., instead of de la Bedeford.

[3] T., iiij.

[4] T., B.; L., Bereford.

[5] The words *de procedendo* are in T., but not in L., nor in 25184.

[6] 25184, plee.

[7] 25184, parcelle.

A.D. 1339. above; therefore the COURT adjudges that he do recover his seisin and his damages taxed by the assise at 40 marks.—*Pole.* A year has passed since the assise was taken, by which it was then found that the tenements were then worth six marks by the year, for which we pray judgment.—ALDEBURGH adjudged that he should recover the six marks for that year.—And so note.[1]

(61.) § A writ was brought against one A. de B., "late "parson of the church &c.," for whom a Protection was put forward, in which "late parson &c." was not expressed, and exception was taken upon the variance.—And SCHARSHULLE said that where there was less in the Protection than in the writ it would be disallowed, but not so if there was more.—*Pole.* That is true if there be less in the surname &c.; but "late parson &c."

[1] The record of this case (*Placita de Banco*, Trinity, 13 Ed. III., R°. 351 and R°. 352) is of great length. It is the source of one of the precedents printed in 1531, in the Register of Judicial Writs, fo. 217. "*Quod Justitiarii procedant ad* "*captionem, non obstante colla-*" *tione Regis quam pars adversa* "*allegat.*" The parties were John de Boddenho, chaplain, plaintiff, and John de Derby, clerk, and others, defendants. The chapel was that of Saint Thomas the Martyr, "*de novo constructæ*" by the Mayor and Bailiffs of Bedford, upon the bridge at Bedford. Derby produced the letters patent of collation, or (as it would have been termed in more recent times) donation. He produced also a mandate (under the Privy Seal) to the Justices assigned to take Assises in the county of Bedford, forbidding them to proceed without consulting the King. The assise was taken only after several delays, and after the plaintiff had presented two petitions "*coram* "*nobis et consilio nostro in Parlia-*" *mento nostro.*" When the verdict had passed in his favour, judgment was not give for him until he had presented a third petition in a similar manner. At the end it appears that the record was sent into the King's Bench upon a writ of error. It is stated in the *Liber Assisarum* (and the statement is copied in Brooke's *Abridgment*) that the judgment was reversed; but the proceedings *Coram Rege* have not been found in the term to which reference is there made (Trinity, 15 Ed. III.). The reversal, however, is also incidentally mentioned in Report No. 54 in the Year-Book of Michaelmas Term, 13 Ed. III (which will be printed in the next volume). The assignment of error seems to have resembled the point taken by Parning with regard to the description of the person of the plaintiff.

si agarde la COURT qil recovere sa seisine et ses damages taxes par lassise a xl. marcz.—*Pole.* Passe est un an puis lassise pris, par quel adonqes fust trove qe les tenementz valoient donqes[1] par an vj. marcz, de quei nous prioms jugement.—ALD. agarda qil recoverist les vj. marcz pur cel an.—*Et hoc nota.*[2] A.D. 1339.

(61.)[3] § Bref porte vers un A. de B. *nuper personam ecclesiæ* &c., pur qi proteccion fuit mys avant, qe ne ne voleit pas *nuper persona* &c., et la variaunce fuit chalenge.—Et SCH. dit qe la ou il ad meins eu en proteccion qen bref home la voleit desalower, mes sil y avoit plus nient.—*Pole.* Cest verite sil ad meyns en le sournoun &c.; mes *nuper persona* &c. nest pas

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[1] The word donqes is not in T.

[2] T., *Et nota* par William de Nottone.

[3] From L. and 25184.

A.D. 1399. is not part of the surname; besides, we could not have had the Protection sealed with such words.

(62.) § Note. In a case before SIR RICHARD DE WILLOUGHBY, in which an assise was brought against one person, whereas he held nothing except jointly, he would not abate the writ but pleaded a release made to him and his fellow. And, because he did not show that he was tenant of the entirety, WILLOUGHBY took the assise.

del sournoun; ovesqe ceo, nous ne la poames pas aver enseale par tiels paroles. A.D. 1339.

(62.)[1] § *Nota.* Devaunt SIRE RICHARD DE WILBY, ou assise fut porte vers un, la ou il navoit rien sinoun joynt, et il ne vodreit mye abatre le bref mes pleda un relees fet a luy et a son compaignoun. Et, pur ceo qe il ne moustra mye qe il fut tenaunt del entier, il prist lassise.

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[1] From 16560 alone.

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INDEX OF MATTERS.

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Two writs of Account against same person in different counties. Defendant appears to one, but *non est inventus* is returned to the other; defendant's appearance to the latter is nevertheless accepted, the plaintiff having the same attorney in respect of both writs, 2–4, 6.
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To the heir's plea, in action of Debt on the obligation of his ancestor, that he has nothing by descent in fee simple, the plaintiff must reply that he has assets at present or that he had since the purchase of the writ, 314.
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B.

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C.

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CHOSE IN ACTION :
That which was a *chose in action* during a testator's lifetime said not to be accounted for by the executors before the Ordinary, but the action of Account to be saved in the King's Court, 82–88.

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Of the Court of Common Pleas swears to a point of practice, 260.

COGNISANCE OF PLEAS :
Claimed for Dean and Chapter of York in pleas (except Pleas of the Crown) touching their men in either Bench, as they had it before the coming of the [Common] Bench to York. Allowed in a case of Novel Disseisin, 14–16.
Allowed to the bailiff of the Abbot of Glastonbury in an action in which the Abbot was a party, 108.
Claimed in the same case both by the bailiff of the liberty of the Minster of St. Peter at York, and by the bailiff of the City of York, 162.
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COURT CHRISTIAN :
Action of Account said not to lie in, for executors, in respect of action accrued during testator'a lifetime, 88.
COURT LEET :
Avowry for amercement in, 214.
There may be one leet within another leet, 218.
CUI IN VITA :
A woman having herself a right to the entirety of a manor, and having been endowed of a third part of it, has a *Cui in vita* for the other two parts, 70.
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CURTESY OF ENGLAND :
It was pleaded in Replevin that a seisin of suit and escuage had been snapped up during a coverture or tenancy by the curtesy, and was therefore insufficient to support a distress, but counsel did not abide judgment on the point, 72–74.
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D.

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DAMAGES :
In *Quare impedit*, 38.
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When a year has elapsed after the taking of an assise, and before judgment rendered, damages to a year's value of the tenements are awarded in addition to the damages taxed by the assise, 372.

DEBT :
Essoin and default in action of, 2.
Cognisance of pleas in action of, 108.
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Action of, where the obligation produced was made while the defendant was in prison. Defendant made default after jury had been summoned. He was distrained to hear the inquest. Had an acquittance been produced he would have been distrained to hear judgment, 118.
Action of, against Sheriff for allowing the recognisor in a Statute Merchant to go at large without having made satisfaction, 130–132, 354.
Action of, by heir of obligee against heir of obligor, 168–170, 344.
Action of, may be brought against several persons by several *Præcipes* in the same writ, 298–300.
Writs of, 148, 150, 162, 344.
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DECEIT :
Action of, cannot be maintained when the party complaining has, in the previous action, made an attorney after the essoin, 18–20.
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DEED :
Infant witness to, sworn in proof of, 4.
Whether one who relies on a deed may say it was executed at a time different from its date, 22.
Deed in which witnesses were named not cancelled when found false, 54.
See ESTOPPEL.

DEFAULT :
To save default tenant alleged that, when on his way to Court, he had been taken on a plaint of trespass, and detained in prison until he made satisfaction in respect of a Statute Merchant. The demandant alleged that the plaint and the Statute Merchant were made by covin to give a cause for the arrest and detention. The tenant said he need not answer an averment to that effect, but issue was joined as to whether he was taken and imprisoned against his will, 78–82.

DETINUE :
Is the action which lies, and not an action of Debt or Account, for money in a sealed bag given to another to re-deliver, 244–246.

DEVISE :
Dower claimed in respect of a devise to demandant's husband, 58–60.
Where lands were devisable by custom it was alleged that a reversion was devisable as well as any other interest. The Court gave no decision on that point, but adjudged that aid could not be had of the executors to whom the devise was made for them to sell for the good of the testator's soul, 172–174.

DIOCESAN :
Writ to Archdeacon as, 46.

DISCLAIMER :
Plaintiff in Replevin, who, after distress for services, disclaims holding of avowant, recovers damages, 214.
Of Bishop in *Quare impedit*, 270–272, 292–296.

DISCONTINUANCE :
Of Process, 102.
None caused after vouching, by not pursuing the voucher, 352.
If the process be well continued between the parties at *Nisi prius*, the want of it against the inquest shall

DISCONTINUANCE—*cont.*
not cause discontinuance, but a new *Venire facias* shall issue, 364.
Whereas it had formerly been law that discontinuance might be alleged at any time during the plea, and that for a very slight matter, as for instance the omission of a letter, it was said by Stonore, Ch. J., C. P. (and confirmed by Willoughby, Ch. J., K. B., and others), that discontinuance should not thenceforth be adjudged for trifling defects, but that they should be amended by the clerks who had made the mistakes in entering the continuances, 366.

DISTRESS. *See* PROCESS; REPLEVIN; TRESPASS.

DOWER:
A woman may hold in dower of an estate higher up, as against one who assigned it, and yet not as against one who has an action of dower on an estate lower down, 70–72.
Where counterplea of voucher shall delay a dowress's recovery, 250.
Abridgment of demand in, 252–254.
Recovery of three parts of the demand against three survivors out of four co-heirs of the husband who had been vouched, and revoucher of the heir of the deceased co-heir, 260.
Dower *ex assensu patris* said to be defeated after the son is seised of the inheritance, 272–274.
Voucher of baron and feme upon writ of, 354.
Writs of, 50, 154, 176, 202, 204, 206, 256, 258, 274, 348, 358.
See AID-PRAYER; CUI IN VITA; PLEADING; RECEIPT; VOUCHER.

E.

EJECTMENT FROM WARDSHIP. *See* PLEADING.

ELEGIT:
Where the sheriff returns that he has made extent but not that he has made livery, 52.
When, after extent and livery, an acquittance is shown for part of a debt, and it is alleged that the extent was improperly made with respect to the rest, there is no remedy but by original writ, as the suit is at an end, 130.
See EXECUTION.

ENTRY, WRIT OF:
Ad terminum qui præteriit, where tenant pleaded feoffment, but demandant denied livery of seisin, 60–64.
Aid upon, 238.
Sur disseisin, 78, 116, 362.
Sur novel disseisin, 118.
Sur cui in vita, 88.
Dum fuit infra ætatem, 236.
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ERROR:
Reversal of judgment, given in the Court of Common Pleas, upon writ of error in the King's Bench, 372.

ESCHEAT, WRIT OF:
Whether it lies for rent, 126, 128.
Upon alleged death of bastard without heir of his body, 260.

ESSOIN:
Amendment of, 2.
On the King's service, warrant of, 2.
It is an intendment of law that essoin proves acceptance of summons, 20.
Idem dies upon, 208.
Tenant made default after appearance, but came into Court at the return of the Petit *Cape*, and alleged that he had been imprisoned. He was then essoined, but upon an objection taken on a subsequent

ESSOIN—*cont.*
day that he had attorneys when he was essoined, and in the absence of proof that they had been removed, the essoin was quashed, and seisin of the land was adjudged to the demandant, 318–320.
When one prays to be received to defend his right, and his prayer is counterpleaded, and there is an adjournment, he cannot be essoined, 336.
Essoin of a tenant quashed because the Grand Distress had previously issued for his default, 346.
When a writ is brought against two persons, one cannot be essoined if the Grand Distress has issued for his previous default, and the two cannot fourch by essoin, 356.
See ESSOINER.

ESSOINER:
Cannot be a party to try a question when one prays to be received, 94.
Plaintiff's essoiner can have a writ of [*Alias* or *Pluries*] *Capias* against the defendant when the sheriff has returned *non est inventus* but the defendant comes and wishes to surrender and find mainpernors, 364.

ESTOPPEL:
Feoffment pleaded to writ of Entry *ad terminum qui præteriit*; livery of seisin was denied by the demandant, and he was permitted to aver that nothing passed, but a doubt is expressed whether this decision was in accordance with previous practice, 60–64.
A demandant (in Formedon) cannot admit a deed pleaded in bar, and say that the particular tenements demanded did not pass, because livery of any parcel passes all the tenements comprised in the deed, if in the same county, 106–108.
Upon writ of Right of Wardship

ESTOPPEL—*cont.*
against the infant's mother, she produced a deed by which he whose estate the plaintiff had enfeoffed one whose estate the infant's ancestor had to hold by socage tenure. As both parties were strangers to the deed the plaintiff was allowed to aver his writ generally, 256–258.
If it is alleged that a deed was obtained by duress, it is a sufficient answer to show that the deed was afterwards enrolled on the prayer of the person who executed, 308–310.
Demandant in Entry *sur disseisin* is not estopped from saying that his ancestor was seised in fee by a deed, purporting a lease to the demandant's ancestor for life, produced by a stranger, 362.

EVIDENCE:
Issue cannot be taken upon that which is not "in evidence," 70.
When a bailiff, defendant in action of Account, says he was counter-teller with another who was receiver, this is "only evidence," 92.
That which cannot be accepted as pleading may be good as "evidence," 224.

EXCEPTIONS, BILL OF:
To be sealed by a Justice of the Court of Common Pleas unless certain pleadings were enrolled, or otherwise the King to be certified of the reason in Chancery, 50.

EXCHEQUER:
The King's Justices at the, 28.

EXCOMMUNICATION:
In an Attachment upon Prohibition it is not a sufficient answer to say that the party suing the Attachment has been excommunicated, 142.

EXECUTION:
Where the Sheriff returned to a *Sci. fa.* upon a recognisance that one of two obligors was dead, and that the other had nothing in his county, a writ was awarded against the heir of the deceased and the ter-tenants, 254.
In *Quare impedit*, 262–266.
Sci. fa. upon an *Elegit.* The defendant in the *Sci. fa.* produced a deed purporting that if he paid certain sums on certain days the recognisance should be void, and he alleged payment and produced several acquittances. The plaintiff admitted some of the acquittances and denied others. Held that the admission did not abate the *Sci. fa.*, 368.
See SHERIFF; STATUTE MERCHANT.
EXECUTORS:
Whether action of Account is maintainable by three against one of themselves, or, upon severance, by two against their co-executor, 82–88.
If one not having previously administered, or having refused to administer, afterwards gives acquittance, he thereby administers because he intermeddles, 36, 88.
A writ brought as against an executor, in respect of the debt of a person deceased, is maintainable if the person against whom it is brought, though not being an executor, has had administration, 148–150.
When in an action of Debt upon contract in one county an executor pleads *plene administravit*, and the plaintiff alleges that the executor has assets in another county, and issue is joined thereupon, the fact shall be tried by a jury of the latter county, 162.
Must mention in their writ that they are executors when they bring an action to recover a debt due to their testator, though the heir in a similar case need not mention that he is heir, the reason being that the executors do not sue for what is due to them, and for their own profit, but the heir does, 168–178.
EXIGENT. *See* OUTLAWRY.
EXTENT. *See* ELEGIT.

F.

FALSE IMPRISONMENT:
Upon writ of False Imprisonment until payment of fine the issue is taken on the imprisonment and on the fine, 8.
Writ of, will lie for a Sub-collector of Fifteenths if arrested for not acting, when he had no special warrant, 54.
FALSE JUDGMENT:
The original writ, as well as the record, must be before the Court before the errors are assigned; and, if the Court have it not in their possession, the party must, at his peril, sue a writ against whomsoever he thinks fit, to have it produced on another day, 356.
Writ of, 346.
FALSE LATIN. *See* ABATEMENT.
FIFTEENTH:
Distress by Sub-collector of, 54.
FINE:
Whether congeable to take beasts *damage feasant* and detain them until a *fine* is paid, or only until *amends* are made, 8–14.
FINE OF LANDS, &c.:
Of an advowson to assure alternate presentations, 24, 34.
Fine rendering to a man and his wife, and after their death to the heirs of the husband, or to a man, and after

FINE OF LANDS, &c.—*cont.*
his death to his heirs, is not permissible ("heirs" being a word of limitation and not of purchase), 92.
By husband and wife to cognisee in fee simple, with warranty of the husband and the wife and the heirs of the wife, is good, 142.
Day, and names of Justices said not to be mentioned in Note of Fine in reigns of Edward I.—Edward III., 146.
Scire facias upon Note of, 144, 148. *See* SCIRE FACIAS.
Fine by which two wives (being parceners) and their husbands render tenements, and grant the reversion, and bind themselves and the heirs of the wives to warranty, is good, because the heirs would be able to warrant the moieties severally; *secus* in the case of joint-purchasers, 162.
The King being beyond sea, an acknowledgment was taken, also beyond sea, by virtue of the King's writ of *Dedimus potestatem*, and the King directed the Chancellor, who was in England, to make a writ of Covenant of even date with the *Dedimus potestatem*. It was argued that, the *Dedimus potestatem* not having issued in due course out of the Chancery, neither it nor the subsequent proceedings could be of record; but it was held that the King's writ was of record in whatsoever part of the world he might be, and that the cognisor could not plead in opposition to his own acknowledgment, 182–184.
The action upon the writ of Covenant was not terminated with the concord, but essoin and discontinuance were still possible, 184.
Limitations of fine sur *done, grant, et render*, 186.
A *Præcipe* does not lie for *virgata* or *carucata prati*, 256.

FINE OF LANDS, &c.—*cont.*
Fine levied by an infant improperly received, 276.
A fine cannot be levied of a market, as a *Præcipe quod reddat* will not lie for it, 370.
See PER QUÆ SERVITIA; QUID JURIS CLAMAT.

FORMEDON:
Against an alien Prior. Demandant non-suited because the Priory had been seized with the King's hand, 322–324.
Count that A. gave to B. for life, remainder to defendant's ancestor in tail, and that the tenements, after the death of B. and demandant's ancestor, ought to descend to demandant. Held that demandant need not show a specialty, 344–346.
In Formedon for rent, where the tenant pleaded *Hors de son fee* with respect to the alleged gift of the alleged donor, and the demandant had not alleged the donor's seisin, *semble* that the demandant need not show a specialty, 314.
Writs of, 54, 104, 106, 142, 158, 272, 300, 302, 310, 314, 336, 342, 362, 366.
See ABATEMENT; AID-PRAYER; ESTOPPEL; PLEADING.

FOURCHER: 356.

FRANCHISE. *See* COGNISANCE OF PLEAS; LIBERTY.

G.

GUARDIAN:
In Account, according to the statute, against Guardian in Socage, the plaintiff need not aver that the guardian is his next friend, nor, according to the words of the statute,

GUARDIAN—*cont.*
his relation; but it is a good issue whether the tenure be socage or not, 320–322.
Guardian may plead misnomer in respect of the name of the person for whom he appears, 344.
See WARDSHIP.
GRACE, DAY OF:
Granted, though defendant was a Peer of the Realm, 222.

H.

HEIRS:
A word of limitation and not of purchase, 92.
HERIOT:
Alleged custom that, where there were joint-tenants, no heriot was payable before the death of the longest liver, 230, 234.
HOMAGE:
The expression "their men" includes persons who do homage, but not villeins, 16.
Form of, where baron and feme are tenants in special tail, 160.
One who does homage does not specify for what, 330.
HONOUR:
Advowson may be appendant to, 26, 30, 32, 38.
Is an ambiguous term, on the one hand expressing a dignity, and on the other hand including many things (*e.g.*) manors, to which an advowson may be appendant, 30, 42–50.
HORS DE SON FEE:
Plea of, does not lie in the mouth of tenant of rent, 52–54.

I.

IMPRISONMENT: *See* DEFAULT; FALSE IMPRISONMENT.
INFANT:
Infant witness to deed sworn in proof of it, 4.
Alleged infant viewed by Court and pronounced of full age, 20–22.
One alleging that he was an infant at the time of the execution of a deed had to answer to it when pleaded, though it bore date previous to the appointment of his guardian in Chancery, and issue was joined as to whether he was under age at the time of the execution, 22–24.
Judgment for infant defendant in Account, 168.
Issue as to infancy in action of Account, 250.
Infant ought not to be received to levy a fine, 276.
Whether infant should be allowed to attorn in performance of a covenant, 276–278.
Infant allowed to bring a writ of Formedon in the Descender as being his possessory writ, 336, 338.
Where the tenant was made sole tenant by writ of Formedon in the Descender brought by an infant, he pleaded in bar a feoffment by demandant's ancestor to himself and another with warranty, and he did not show that he had the other's estate. The plea was held good, but, because the demandant, being an infant, could not acknowledge the deed, the parol demurred, 336–340.
Infant cannot perform Wager of Law, 356.
See AUDITA QUERELA; STATUTE MERCHANT.
INQUEST. *See* JURY.

J.

JURY:
Directions as to the constitution of, 124, 126.
Verdict of, how taken when one only of several defendants in trespass, after the whole had pleaded the general issue, alleged that the plaintiff had taken a husband since the last continuance, 150.
When a verdict has been improperly taken, through omission to inquire of a certain point at *Nisi prius*, and judgment is respited in Banc and process issues to inquire anew, shall the inquest be constitued as before or otherwise ?, 250–252.
Jurors suspected of being procured because they came on the first day from a distant part of the county, and examined thereupon by the Court, 286.
Jurors suspected because they came by *Venire facias* and stayed six weeks in a town, when process against them had not gone beyond small issues, 298.
Knights and men of the highest worth should be upon the jury to try an issue in any action in which a Peer is a party, 290.

K.

KING (THE):
Appointment of guardian to infant in the Chancery is regarded as being recorded by the King, but being recorded *ex officio* is not sufficient to deprive another party of an answer, 22.
KING, THE—*cont.*
Sends writ to the Justices of the Common Bench requiring them to enrol certain pleadings or seal Bill of Exceptions, 44, 46.
His charter cannot be tried unless he is made a party, 98.
Said to be ordained by statute that he ought not to record except by due process, 100.
When he records anything of his own view the record shall not be annulled; *secus* when he records on the information of others, 100.
Averment contrary to his charter not permissible, 158.
His writ is of record in whatsoever part of the world he may be, and a writ issuing abroad by his direction, when he is abroad and the Chancery in England, is good, although in the ordinary course it should issue out of the Chancery, 182.
Sends writ to Justices of the Common Bench to make a note, and engross a fine, when the plaintiff is out of court as regards the original writ, but has constituted an attorney to receive one part of the chirograph, 184–186.
Having been prayed in aid as reversioner, and having subsequently granted away the reversion, sends a writ to Justices setting forth the facts, and directing them to proceed, 238.
Petition to, by bill in Parliament, 240, 242.
His charter is as much of record as a fine, 242.
Whether he retains the freehold of a ward's land seized into his hand until sued out by the heir when of full age, notwithstanding the fact that he has devested himself of his wardship, 266–268.
He does retain the freehold of land seized into his hand (as that of an

KING, THE—*cont.*
alien Priory), notwithstanding the fact that he may have leased the custody of the land back again to the person or corporation from whom he took it, 322–324.
He shall have such day as he pleases, 330.
The *Nisi prius* refused, because he did not wish it, 330–332.
His count shall never be abated, but he may change it at his will, and count anew, 332.
Sends mandate under the Privy Seal to stay proceedings between party and party upon suggestion that he is interested, 372 (note).
Petitions to, in his Council, in his Parliament, 372 (note).

L.

LEET. *See* COURT LEET.
LIBERTY:
A *non omittas* clause, applicable only to a particular liberty, was inserted in the *Summoneas ad warrantizandum*, when a tenant appeared to a *non omittas* summons, and vouched to warranty in the same county, after the sheriff had returned to a summons for the tenant without the clause of *non omittas* that the bailiff of the same liberty, to whom he had sent, had not answered, 316–318. *See* COGNISANCE OF PLEAS.
LIMITATION. *See* RIGHT, WRIT OF.

M.

MANOR:
When a manor A. is holden as of another manor B. by certain services, and the tenant in tail of the manor of B. purchases the fee simple of the manor of A., the services and
MANOR—*cont.*
seignory are not extinguished, except in relation to the individual tenant in tail who purchases; and his alienee holding the manor of A. must render the services to a future lord of the manor of B., 132–138.
MARKET:
Writ of nuisance for setting up a market to the injury of the plaintiff's market, 208–212.
Fine cannot be levied of, 370.
MARRIAGE:
Effect of, when one of two sisters (demandants) takes a husband while a plea is pending, 56.
MESNE:
Tenant for life and tenant in dower may have a writ of Mesne, 306–308.
See ABATEMENT.
MISNOMER:
Effect of, where the wife is misnamed in a writ brought against husband and wife, and the reversioner, praying to be received, shows a lease to them in which she is rightly named, 340–342.
May be pleaded by party in person, or by guardian, but not by attorney, 344.
See VARIANCE; VIEW.
MORT D'ANCESTOR:
Assise of, for meadow and rent, 52.
Demandant's lease pleaded by tenant in assise of, and traversed by the demandant, without any specialty having been shown, 52–54.
Assise of, said to lie for heir of woman to whom a manor which was of her inheritance has been allotted in dower, 70.
MORTMAIN:
See COLLUSION.
MOTIVES:
Whether an averment touching motives in a civil action need be answered on the analogy of malice in a criminal case, 80–82.

N.

NISI PRIUS :
Receipt of feme, on default of husband, after issue joined, by Justices at, 246–248.
Verdict at, having been taken, without due inquiry as to a certain point, judgment is respited in Banc, and jury process issues to inquire anew, 250–252.
Refused because the King did not wish it, 330–332.

NOVEL DISSEISIN :
Assise of, not a plea of one Bench or the other except in the county in which the Bench may be, 16.
Assise of, for rent-charge, 68.
A new assise lay in respect of a disseisin of the same land anterior to one in respect of which there had been a recovery by assise of Novel Disseisin, 192–200.
Assise of, for a chapel, 370.
See ABATEMENT OF WRITS ; PLEADING ; RECEIPT.

NUISANCE :
Writ of, for setting up a market, 208–212.

O.

OBLIGATION :
Obligation by which an alien Abbot, with the assent of his Convent bound himself and his Convent. The specialty bore date in England. This cannot be understood to be the deed of the convent. *Per* Stonore, Ch. J., C. P., and affirmed by all the Justices and the Council, 364–366.

OFFICE OF THE COURT :
The Court refused to give judgment upon default of tenant after mise joined upon a writ of Right, because the count was of a seisin anterior to the time of limitation, 310–312.

OFFICE, INQUEST OF :
One arraigned for felony found guilty by, after he had claimed Benefit of Clergy and the Ordinary had refused to claim him, 68.

ORDINARY :
Quare impedit where the hands of the Ordinary were tied, 28.
Functions of Ordinary in relation to executors and their accounts, 82–88.

OUTLAWRY :
In an Appeal of Murder, the Sheriff having returned *non est inventus* to *Capias, Alias, and Pluries*, the County Court awarded a writ of Exigent, but upon removal of the Appeal into the King's Bench this was held bad, the Sheriff was amerced, and another *Capias* issued, 152–154.
The Sheriff having returned *non est inventus* to *Capias* in Trespass, the Court will not receive the defendant to surrender, even though the Exigent may not yet have issued, 364.
Reversal of, for error in that it was recorded that the defendant was *quinto exactus* on Wednesday after the Feast of Saint John *Ante Portam Latinam*, and not stated whether on the Wednesday *next* after or otherwise.

P.

PARCENERS :
The doctrine that a parcener cannot avow upon a co-parcener does not apply to a stranger in blood who has estate of a parcener, 226–228.

PARLIAMENT :
Petition to the King by bill in, 240, 242.
Petition to the King, in his Council, in his Parliament, 372 (note).
PEER OF THE REALM :
Has no privilege in respect of day of grace prayed against him, 222.
Can claim to have knights and men of the highest worth upon a jury to try an issue in an action to which he is a party, 290.
PER QUÆ SERVITIA :
Tenant cannot absolutely disclaim holding of cognisor, because he would so prejudice recovery by writ of Right, but may plead that he did not hold of cognisor on a particular day, 16.
Form of homage and suit in a case of. Baron and feme were purchasers in special tail, with remainder to the heirs of the baron, and their services had been granted by fine, 160.
If tenant for life, defendant in *Per quæ servitia*, holds without impeachment of waste by virtue of the deed of the cognisor of the fine, he cannot make the acknowledgment and entry of the deed a condition of his attornment; and if he is impeached of waste he has his remedy against the cognisor by writ of Covenant, 166–168.
PETITION TO THE KING :
By plaintiff in *Quare impedit*, where the hands of the Ordinary were tied, 28.
Venire facias founded upon, pursuant to the endorsement of the petitioner's "bill in Parliament," 238–242.
"By bill in Parliament" for redress, where the King had granted a franchise to one, and afterwards granted the same franchise to another, 242.
PETITION TO THE KING—*cont.*
In his Council in his Parliament, 372 (note).
PLEADING :
(Account.) If in action of Account defendant pleads that he was appointed bailiff without being required to account, and makes *profert* of deed to that effect, plaintiff must reply and not merely aver his writ, 6.
Issue "never his receiver by the hands of those of whom he has counted" not received; defendant must say "never his receiver," 92.
Defendant pleaded that he received and had accounted for 7*s.* per week, *absque hoc* that he was receiver according to the plaintiff's count, 108.
(*Cessavit.*) Where defendant pleaded that he held of another than the plaintiff by certain services the issue entered was as to whether he held of the plaintiff or not, 336.
(*Cui in vita.*) Demand of land and rent. Several pleas as to several parcels. Allegation that the rent had been extinguised by expiration of term *pur auter vie.* Issue joined as to whether the donor from whom the demandant made title had a fee in the rent or a term *pur auter vie*, 12–14.
(Debt.) The plaintiff shall not make mention of the cause of the debt in his writ, but it shall be declared in the count, and when the heir of an obligee brings the action he shall not state in the writ that he is heir, though executors bringing the action must state that they are executors, 168–170.
(Dower.) Tenant pleaded that there had been a recovery by assise against the demandant herself and another, and that the husband's estate

PLEADING—*cont.*

was intermediate between the disseisin and the recovery. Demandant alleged devise by W. to her husband. Tenant rejoined that the estate of the husband was by disseisin, *absque hoc* that W. devised, and issue was joined thereupon, 58–60.

Tenant pleaded as heir in tail against demandant, who was his father's second wife, a fine settling the land, &c. upon the husband and first wife in special tail. The demandant was not allowed to aver the husband's seisin. But the tenant having stated that whereas the demand related to ten messuages, &c. it should have related to one, the demandant prayed seisin of the rest, and as to the one said "Not comprised," and issue was joined thereupon, 154–156.

(Ejectment from Wardship.) It is a good plea (to an action brought by the lessee of the alleged guardian in chivalry) that the lands were held in socage, and that the ejectment was made by the lawful guardian together with the ward, 126–128.

(Entry *sur disseisin.*) If the plea of the tenant be not inconsistent with the writ, the demandant may aver his writ generally, 362–364.

(Entry *sur novel disseisin.*) Tenant cannot plead that one was not so seised as to be capable of being disseised, but must plead that he did not disseise, 118.

(Entry *sur cui in vita.*) Writ against A. by one *præcipe* and against a husband and his wife by another. A. made default after default. One J. prayed to be received as tenant for life by demandant's lease, but he did not maintain his allegation after imparlance; and seisin was awarded. The husband and wife

PLEADING—*cont.*

also made default after default. J. prayed to be received, alleging a lease for life to the husband alone, and grant of the reversion to himself. The issue was taken whether or not the husband was sole tenant, 88–90.

(Formedon.) Writ brought by two sisters. One took a husband while the plea was pending. Issue, whether she took a husband since the last continuance, 54.

If the tenant pleads in bar that the alleged donees were enfeoffed in fee, and that he is or represents the feoffee of the survivor of them, so that the demandant is bound to warrant him, the demandant cannot aver his writ, but must answer, 104.

New count demanded by tenant after view had and count entered upon the roll before the view. Demurrer thereupon. Counsel disavowed in respect of his demand for a new count, and the gift traversed, 142–144.

If the tenant allege joint-tenancy as to parcel, and non-tenure as to parcel, he must hold to one only. If he hold to the joint-tenancy of parcel he must answer as to the rest, but the moment the joint-tenancy is found the whole writ will abate. So the non-tenure of part will abate the whole writ. *Per* Sharshulle; Shardelowe did not concur, 300–302.

(Mort d'Ancestor.) Plea of *hors de son fee* does not lie in the mouth of the tenant of rent, 52–54.

Demandant cannot aver that tenant holds nothing by lease from him unless he admit the lease and say that the ancestor died seised, though the lease may be traversed, 52–54.

PLEADING—*cont.*

(Novel Disseisin.) Tenant allowed to plead in bar of Assise of Novel Disseisin a deed executed while the writ was pending, 4–6.

Against a plaintiff said to be an infant a plea good against one of full age should be pleaded in order that the Court may have warrant for delay, 20.

Whether tenant could plead as to parcel by bailiff, and as to parcel in his own person, 22.

Plaintiff having appeared as an infant by guardian and having, upon his infancy being denied, been viewed by the Court and adjudged to be of full age, and his deed having been pleaded by tenant and warrantor, issue was joined as to whether he was under age at the time of the execution, 20–24.

In assise for rent-charge, as to parcel tenant in dower pleads estate prior to the charge, and the question whether the charge was antecedent to her marriage was put to the Assise, 68–70.

Voucher in, 188, 194.

Tenant in assise of Novel Disseisin pleads recovery in Assise of Mort d'Ancestor on the seisin of his uncle. Plaintiff may reply that the uncle held in tail, remainder to himself, and that, because the uncle died without issue, he entered in his remainder, 188–200.

Of pleading out of the point of assise, and of taking the assise at large, 196, 198, 200.

Issue on the title in Assise of Novel Disseisin, 194, 200.

Defendant joint-tenant, against whom the writ had been brought as sole tenant, instead of pleading in abatement of the writ, pleaded a release to the two joint-tenants, and the assise was taken, 372.

PLEADING—*cont.*

(Nuisance in setting up a market.) Notwithstanding an objection of double pleading, it is a good plea for the defendant that he did not set up any market to the injury of the plaintiff's market, 212.

(*Per quæ servitia.*) Tenant cannot absolutely disclaim holding of cognisor because he would so prejudice recovery by writ of Right, but may plead that he did not hold of cognisor on a particular day, 16.

(*Quare impedit.*) *Utraque pars placiti actrix esse potest,* 30, 42.

Ostensio, Demonstratio, and *Declaratio* in, 42.

Enrolment of pleadings in, by virtue of King's writ, 44, 47.

(Ravishment of Ward.) Issue may be joined as to whether he whose heir the ward is supposed to be held of the plaintiff on the day of his death, but not whether the plaintiff was seised of the wardship, 342.

(Right of Wardship.) The count of a tenant by the curtesy made simply, and not according to his case, adjudged good, though not approved by the Court, 350–352.

Plea of prior feoffment under the Stat. 13 Edw. I. c. 16, and issue thereupon, 352.

(Trespass.) Upon an action of Trespass relating to beasts taken and detained until a fine was paid, the taking of the beasts, *damage feasant,* was avowed, and the taking of the fine was (by way of protestation) denied. Issue joined not on the taking of the beasts, because that was admitted, but on the taking of the fine, 8–12.

Issue joined as whether the place in which the trespass was committed was in a vill, 18.

PLEADING—*cont.*
Defendants having pleaded Not Guilty, when they might have justified, the Court directed a conviction, 66.
(Waste.) Tenant pleads that he has recovered a third part of the land, and as the judgment (though not the execution) preceded the purchase of the writ it goes to the writ as a whole, 56, 58.
(Pleas of Land, &c., generally.) Tenant pleads that he is a religious professed, and holds at the will of a Prior. It is not sufficient for the demandant to traverse the profession, but issue must be joined as to whether the tenant has a freehold, 268.
See ABATEMENT ; ESTOPPEL ; REPLEVIN; TRESPASS.
PONE PER VADIOS. *See* PROCESS.
PRÆCIPE QUOD REDDAT : 82, 88, 102, 112, 128, 258, 268, 344, 364.
Does not lie for a market, 370.
PRECE PARTIUM : 202, 220.
PREROGATIVE. *See* KING, THE.
PRESENTATION :
Alternate, to a church, assured by fine, 24, 34.
PROCESS :
Against witnesses to a deed, 4.
Jury process into a liberty 68.
Appearance before process, and on process, 168.
When the Grand Distress was returnable upon a writ of Deceit, one of the supposed viewers complained that he had been distrained, not being the same person, though bearing the same name, as the person who was returned viewer. But, because no writ was returned, an *Alias* writ issued, 300.
Where to the Grand Distress against the executors of a defendant in a writ by Right of Wardship, who died pending the writ, the Sheriff returned *Nihil*, it was held that
PROCESS—*cont.*
Proclamation should be made in that county, and not process issued into another county where the executors had assets, 354–356.
Attachment, 78, 124, 150.
Cape ad valentiam, 206, 258, 260, 348.
Capias, (against appellees), 152, 154, and *See* OUTLAWRY.
Capias (in action of Account) 360, 364.
Capias (in Trespass) 364, and *See* OUTLAWRY.
Distress, 124, 202, 354.
Grand *Cape*, 94, 102, 176, 316.
Grand Distress 124, 202, 272, 282, 300, 346, 354, 356.
Petit *Cape*, 78, 90, 110, 112, 120, 124, 204, 318, 320, 364.
Pone per vadios, 270.
Proclamation (upon a writ of Right of Wardship), 356.
None against the vouchee, 298.
Effect of default of defendant at, 308.
Re-summons, 354.
Sequatur suo periculo, 94, 120, 152, 158, 260, 348.
Summons, 124, 316.
Summoneas ad warrantizandum 316, 318, 348, 360.
See DISCONTINUANCE.
PROCLAMATION. *See* PROCESS.
PROHIBITION :
Said to lie where an executor is accounting before the Ordinary for a *chose in action* which was a *chose in action* during the life time of the testator, 84.
See ATTACHMENT UPON PROHIBITION.
PROTECTION :
Form of, 274.
When a writ is brought against several, and a Protection is allowed for one, the parol shall demur as to all, though some may have made default, 316.

PROTECTION—*cont.*
When the obligor in a Statute Merchant sued a *Venire facias* against the obligee for the latter to show cause why he had sued on the Statute, contrary to his deed, and the obligee put forward a Protection, it was disallowed, because the obligee, being warned in respect of his suit on the Statute, was regarded as a plaintiff, 360.
A Protection *quia profecturus* in the King's service, may be produced after count and plea, 360–362.
Protection recalled, 362.
See VARIANCE.

Q.

QUALE JUS :
After recovery upon *Cessavit*, 334.
See COLLUSION.
QUARE IMPEDIT :
Report of, followed by record of, in full, 24–50.
Where the hands of the Ordinary were tied, 28.
Damages claimed and remitted in, 38, 46.
Issue as to whether a particular presentation had been as in right of a tenant in dower or of one seised of the advowson in fee simple, 32, 44.
Utraque pars placiti actrix esse potest, 42.
Ostensio, *Demonstratio*, and *Declaratio* in, 42–50.
Record and process brought before the King in Chancery, after judgment in Court of Common Pleas, 46.
When plaintiff, claiming the advowson, admits that defendant's ancestor or predecessor presented by force of a grant of the next presentation, yet does not produce a specialty or show anything more, he cannot aver the grant, but the defendant may have his writ to the Bishop, 114–116.
If a day be given, *prece partium*, after the Grand Distress, and the defendant make default, a new Distress shall issue, and not a writ to the Bishop, 202.
Appropriation duly effected by license from the King, and assent of the Ordinary, bars the grantor of the advowson, 260–262.
The defendants made their title from the feoffment of the advowson to themselves and several others. The plaintiff was nonsuited. The writ to the Bishop was awarded to the defendants named in the writ of *Quare impedit*, without any mention being made, in the judgment, of the other feoffees not so named, 262–266.
When brought against a Bishop (and others who came not to the *Pone per vadios*) the Bishop disclaimed except as to institution and deprival and that which belongs to the Ordinary. The plaintiff averred generally that the Bishop disturbed him, and the Bishop pleaded the litigiousness of the advowson. The plaintiff had a writ to the Bishop, though those named with him in the *Quare impedit* could still come and show that they ought to have, upon the same original *Quare impedit*, a writ to the Bishop, 270–272.
Whether a plaintiff can aver disturbance *generally* against the Ordinary, 270, 290.
Where the Bishop was made a defendant, and disclaimed interest except as Ordinary, and issue was joined between the plaintiff and him as to the disturbance, to try which the

QUARE IMPEDIT—*cont.*

Inquest came, the Court delayed the Inquest till the trial of another issue upon the title between the plaintiff and another defendant. But it was said that the process against the Inquest to try the issue between the plaintiff and the Bishop ought not to have been made until the other Inquest had been taken, 286–298.

The King's title denied by traversing the appendancy of the advowson, and issue joined thereupon, 324–332.

Plaintiff's title admitted, and disturbance traversed, 350.

See ADVOWSON; HONOUR; PRESENTATION.

QUARE INCUMBRAVIT:

Lies only against the Ordinary, 298.

QUARE NON ADMISIT:

When the proper remedy, 294, 296, 298.

Damages upon, 294.

QUID JURIS CLAMAT:

Where the defendant pleaded a plea contradictory to the plaintiff's alleged title, the Court permitted the plaintiff to aver his writ but allowed the defendant's allegation to be entered, 220.

R.

RAVISHMENT OF WARD. *See* PLEADING.

RECEIPT:

Action against baron and feme and third person who makes default. Issue joined as to whether the baron and feme held solely or in common with the third person. The baron makes default at *Nisi prius*; the Petit *Cape* thereupon issues for one moiety, and judgment is respited in respect of the other; the baron makes default upon the return of the Petit *Cape*, and the feme is received in respect of the whole, 110–114.

Feme, being received on default of baron, vouches to warranty and afterwards makes default. One comes and prays to be received as reversioner, having made a lease to the feme for her life, 156–158.

If baron and feme plead a record in bar of an assise *in pais*, and they are adjourned into the Common Bench for production of the record, and the baron then makes default, the feme shall be received and may vouch a third person, 186–188, 194.

One having remainder in the *land* received for default of the tenant for life against whom dower of a *rent* issuing out of the land was demanded, 202–204.

A writ was brought against a man and his wife, in which the wife was misnamed. The reversioner, praying to be received upon their default, set out his lease to them, the wife being therein rightly named. He was not received, but the demandant was nonsuited, 340–342.

One having a reversion expectant on the estate of a dowress who had leased her estate to the tenant was received upon the tenant's default, 358.

See BARON AND FEME; ESSOIN; PLEADING (*Cui in Vita*).

RECORD. *See* KING, THE; ROLLS.

RECOUPING OF RENT. *See* RENT.

REDISSEISIN:

When one commits a redisseisin and alienes, a writ of Redisseisin does not lie, 100.

RENT:

Demand of rent by *Cui in vita.* Allegation that it had been extinguished by expiration of term *pur auter vie.* Issue joined as to whether the donor had a fee in the rent or a term *pur auter vie*, 12–14.

Claimed by Assise of Mort d'Ancestor. Plea of *hors de son fee*, which was held not to lie in the mouth of the tenant of the rent, 52–54.

Assise of Novel Disseisin for rent-charge; as to parcel tenant in dower pleaded estate prior to the charge; question whether the charge was antecedent to her marriage put to the Assise; another tenant pleaded that, whereas a deed was shown to the effect that the rent was to be taken from the manor of S., that manor extended into S., and into another vill; and, it being found that parcel was in another vill and was demesne in the hands of the grantor at the time of the grant, the writ abated, 68–70.

Writ of Ejectment from Wardship, in respect of, 126.

Whether writs of Right of Wardship, Escheat, and *Cessavit* lie for, 126, 128.

Writ to recoup rent where one against whom an execution was sued out had nothing but a rent payable by him who sued out the execution, 176–178.

See RECEIPT.

REPLEVIN:

The Return is within the Statute 13 Ed. I. c. 2, and irreplevisable, when plaintiff is nonsuited upon writ of Second Deliverance sued out of the rolls, though the Court may not be apprised of the cause of the distress, 50.

Avowry by Sub-collector of Fifteenth, who, it was held, ought not to have acted without special warrant, 54.

REPLEVIN—*cont.*

Avowry for fealty and rent in arrear. Question whether the services were due for the entirety or only for a moiety of the tenements. Judgment reserved as to whether issue could be joined on an alleged feoffment of a moiety to avowant's grandfather, 64–66.

Avowry for homage, fealty, suit, and escuage. Plaintiff pleaded that there was no seisin of the suit, or escuage, except as snapped up during a coverture or tenancy by the curtesy, but did not abide judgment on the point, and afterwards traversed the seisin simply, 72–74.

Issue as to the place in which the taking was, 74.

Guardian avowed for *damage feasant*, as in his own several, and not in that of the ward. Plaintiff alleged that the wardship belonged to him and that the taking was on his several. Held that the right to the wardship could not be tried in this action, and issue was joined as to the severalty, 94–96.

Avowry for services in arrear, and pleadings where seignory was alleged to have been extinguished, 132–138. (*See* MANOR.)

When the avowant, a widow, commences her avowry by the seisin of her husband, alleging that he enfeoffed and took back an estate in tail jointly with her, and that she survived and was seised, if her seisin is not denied she need not traverse an alleged feoffment of the entirety by her husband's ancestor, and a re-enfeoffment of her husband of a portion only of the lands by the ancestor's feoffee; but if the plaintiff deny that he attorned to the husband's feoffee the issue of fact is tried by a jury, 138–142.

To an avowry of *damage feasant* by

REPLEVIN—*cont.*
commoner of one vill a resident in another vill cannot plead that the vills intercommon in a particular field, but must plead generally that they intercommon, 206.
When to an avowry of *damage feasant* by commoner of one vill a resident in another vill pleads common appendant to his freehold the latter need not answer as to whether the vills intercommon, 208.
Plaintiff in replevin who, after distress for services, disclaims holding of avowant recovers damages, 214.
Avowry for amercement in a Court Leet, 214.
The doctrine that a parcener cannot avow upon a co-parcener does not apply to a stranger in blood who has the estate of a parcener, 226–228.
Where the avowry was for a heriot due from a deceased tenant in villenage, but not as upon a very tenant, the plaintiff was permitted to allege freehold, 228–234.
Avowry for suit to the court of a manor in respect of a messuage in a borough, 352.
RESUMMONS. *See* PROCESS.
RETURN OF SHERIFF. *See* SHERIFF.
REVERSION:
Cannot be averred by reason of a grant of a reversion expectant on estate for life of baron alone, when baron and feme hold jointly, 96.
RIGHT, WRIT OF:
Where the demandant counted of a seisin previous to the time of limitation, the Court would not give judgment, although the tenant made default after the mise joined, 310–312.
Final judgment was given against a demandant and his heirs, because he imparled, after the mise joined, and did not return, 334.
Writ of False Judgment upon, 356.
ROLLS:
Entries of pleadings on, by virtue of the King's Writ, 44, 47–51.
Amendment of, 250–252.

S.

SACRILEGE:
A criminal is not claimed by Ordinary to have benefit of clergy after, 68.
SCIRE FACIAS:
Alias writ of, granted, where an *Elegit* had been sued, and the sheriff had returned that he had made extent but not livery, and the first writ of *Sci. fa.* had not been served, 52.
Against two persons, upon a recognisance, where the sheriff returned that one was dead, and that the other had nothing whereby notice could be given him. Writ awarded against the heir of the deceased and the tertenants, 254.
Against executors and others, 306.
Upon *Elegit*, 368.
(Upon a fine.) A reversion having been granted as of tenements held in dower, the averment was received that the woman did not hold in dower of the inheritance of the cognisor on the day of the acknowledgment, 224, 226.
There may be one *Scire facias* upon divers fines or notes, 260.
Sued by remainderman against an infant, where the king had leased the wardship, and the lessee had devised it and died, and the King was prayed in aid. *Quære* whether the freehold was still with the King until the lands were sued out of his hand by the infant, 266–268.
(Upon note of a fine) brought by the heir of the grantee of a reversion expectant upon death of tenant

SCIRE FACIAS—*cont.*
in dower. Tenants, husband and wife, plead grant of reversion expectant upon death of a lessee for life, to W., the wife's uncle, and descent to her and her sister as co-heirs, and subsequent partition, and pray aid of the sister. As it was not stated whether the reversion was granted to W. before or after the fine was levied, and, as the plaintiff denied that W. ever had anything, the aid-prayer was refused, 144–148.
See ADVOWSON; EXECUTION.
SCIRE FACIAS IN THE CHANCERY to repeal Letters Patent, &c.:
Sci. fa. to warn the grantee of the King (into whose hand the escheator had seized a manor for the alleged high treason of the plaintiff) and the grantee's alienee to show why the manor should not be reseized into the King's hand and delivered to the plaintiff, who said he had always been faithful. Writ maintainable (*per* Willoughby Ch. J., K.B.) though the alienee could not vouch to warranty, for if he had a warranty he might have a *Warrantia Chartæ*. The plaintiff alleged that upon his petition the King had granted a commission to R. Talbot to inquire as to the alleged treason, and that the Inquest found he had not been guilty of practices against the King. The defendant pleaded that the Inquest was not taken by R. Talbot, but by others. *Quære* whether the plaintiff was bound to show the authority of those who took the Inquest, 96–100.
Where the King had granted a franchise to one, and afterwards granted the same franchise to another, in order that the latter charter might be repealed in any point in which it impaired the former, 242.
SECOND DELIVERANCE:
See REPLEVIN.
SECTA AD MOLENDINUM:
Aid granted to tenants by the curtesy, for life, and in dower, but voucher not allowed, 120–124.
Where toll of one-tenth was alleged, in count, to be payable, 122.
Execution in, stayed until after inquiry touching collusion, when plaintiff was an Abbott, 124–126.
SEIGNORY:
Extinction of. *See* MANOR.
SEISIN:
Livery of, in fee tail, though it is expressed in a deed that the fee simple is to be conveyed, enures only to conveyance of an estate tail, 62.
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